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Department
of Education

CHAPTER 766

REGULATIONS

GOVERNMENT DOCUMENTS
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INTRODUCTION

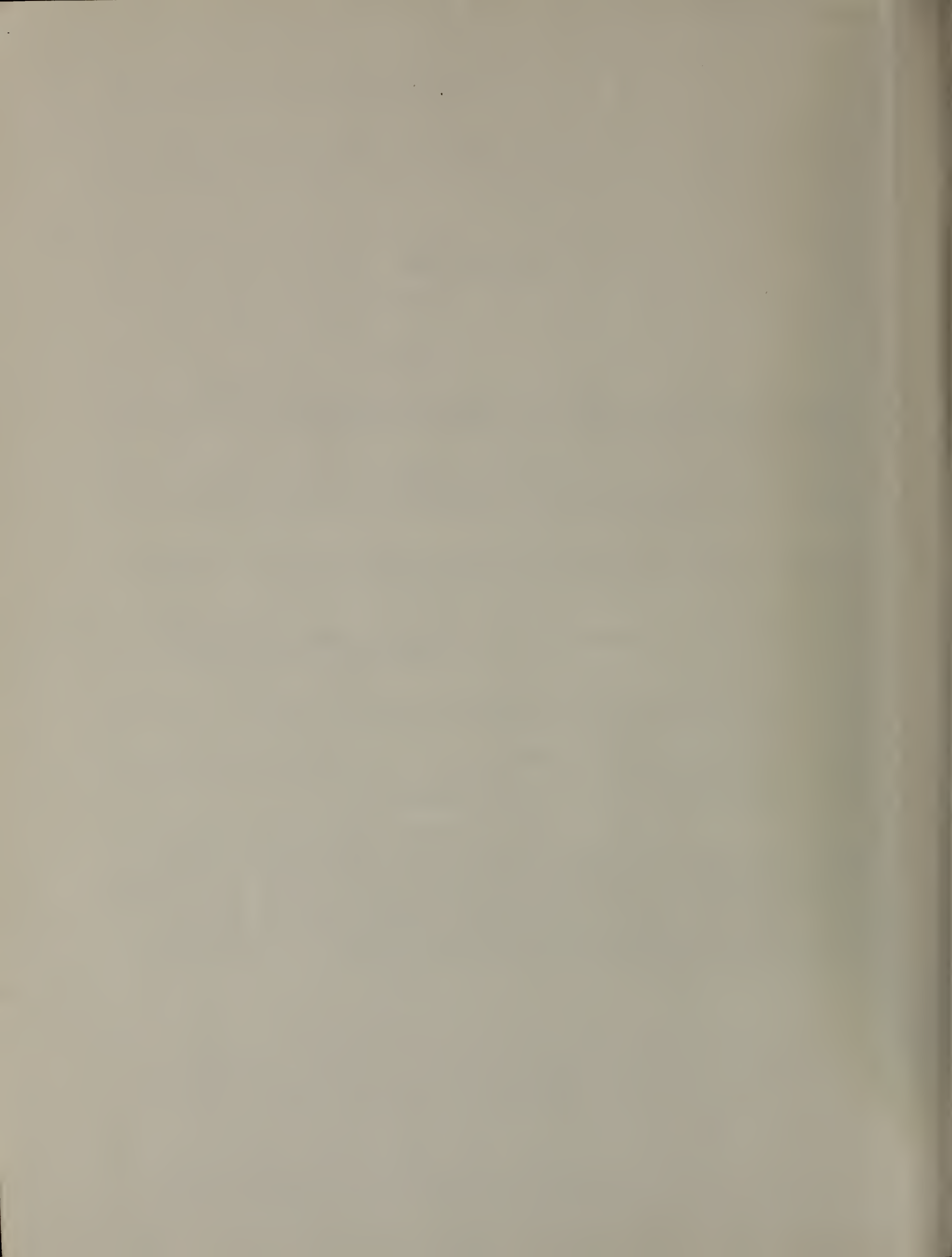
Chapter 766, Massachusetts special education law, is designed to define the needs of children requiring special education in a broad and flexible manner, to minimize the possibility of stigmatization, and to maximize the child's development in the least restrictive environment.

The Massachusetts Department of Education has lead responsibility for ensuring that all provisions of Chapter 766 are met, for promulgating the regulations for its implementation, and for ensuring that the provisions of other state and federal special education laws are also met.

The Department coordinates the implementation of policies and procedures for the provision of a free and appropriate public education to children with special needs through specific activities as:

- providing training and technical assistance to school districts, parents, and other constituents
- monitoring
- reviewing and approving local school districts' program plans
- providing mediation and due process hearings
- establishing standards and qualifications for service providers.

Functioning in an advisory capacity to the Board of Education is the State Advisory Commission for Special Education (SAC). The SAC is responsible for advising the Department on unmet needs for special education within the Commonwealth; submitting an annual written report to the Board of Education; commenting publicly on the State Plan for special education, and the procedures for distribution of funds under Part B of the Individuals with Disabilities Education Act (IDEA), the federal special education law; and assisting the Department in developing and reporting such information as may be required by the United States Department of Education under the IDEA.



SPECIAL EDUCATION LAWS AND REGULATIONS

The provision of educational services to children is governed by a variety of state and federal laws or statutes and administrative regulations. Following is a brief description of the federal and state codification system and information concerning the laws and regulations which govern the provision of special education to students with special needs.

FEDERAL

A statute passed by Congress and signed into law by the President is often given a short title, and is always given a Public Law (P.L.) number and a title and section in the United States Code (U.S.C.). Many such laws authorize the U.S. Department of Education to promulgate administrative regulations to further define a program created by statute. These regulations are codified in the Code of Federal Regulations (CFR).

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

(Federal special education law:
formerly Education of the Handicapped Act)

Statute: P.L. 94-142
20 U.S.C. §1400 et seq

Amended by: P.L. 89-773 (1978)
P.L. 98-199 (1983)
P.L. 99-457 (1986)
P.L. 101-476 (1990)

Regulations: 34 CFR Part 300

STATE

A statute by the Massachusetts Legislature and signed into law by the Governor is occasionally given a short title, and is always given a session law number based on the order of enactment in that calendar year (e.g. Chapter 766 of the Acts of 1972). Most statutes are also assigned a chapter and section in the Massachusetts General Laws (M.G.L.), which is the codification of all Massachusetts statutes. The Code of Massachusetts Regulations (CMR), is the entire body of administrative law for Massachusetts. All Board of Education regulations are codified in title 603 of the CMR.

CHAPTER 766 OF THE ACTS OF 1972

(Massachusetts special education law)

Statute: M.G.L.c.71B

Regulations: 603 CMR 28.00

RELATED LAWS AND REGULATIONS

The following laws and regulations apply either to particular aspects of special education, or other groups of students, but may also apply to certain special needs students. In cases where the statute is commonly referred to by its Public Law number, that citation has been included. This is not a comprehensive listing, but may be helpful as a general reference.

FEDERAL

SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended by P.L. 100-259 (the Civil Rights Restoration Act of 1987)

(the civil rights law prohibiting discrimination against qualified handicapped persons by recipients of federal funds)

29 U.S.C. 794

Regulations: 34 CFR Part 104

THE STUART B. MCKINNEY HOMELESS ASSISTANCE ACT OF 1987

(a federal statute that provides grants to states to help the homeless and requires states to educate homeless children)

P.L. 100-77

42 U.S.C. 11431 et seq

TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, as amended by P.L. 100-297

(one component of this program of federal aid for disadvantaged students provides grant funds for handicapped students who were or are in state-operated or state-supported facilities; citations which follow are to that component.)

P.L. 89-313

20 U.S.C. 2791 et seq

Regulations: 34 CFR Part 302

THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT OF 1974

(the federal student records law)

20 U.S.C. 1232g

Regulations: 34 CFR Part 99

RELATED LAWS AND REGULATIONS (Cont'd)

STATE

Statute: **M.G.L. c.71A** (transitional bilingual education)
Chapter 1005 of the Acts of 1971

Regulations: 603 CMR 14.00

Statute: **M.G.L. c.71B 12A-12C** (transitioning - turning 22)
Chapter 688 of the Acts of 1983

Regulations: 101 CMR 10.00

Statute: **M.G.L. c.74** (vocational education)

Regulations: 603 CMR 4.00

Statute: **M.G.L. c.76, §5** (a portion of this section prohibits discrimination against students in
public schools)
Chapter 622 of the Acts of 1971

Regulations: 603 CMR 26.00

NOTE: Another portion of this statute guarantees resident children the right to attend school.

Statute: **M.G.L. c.III G** (early intervention)
Chapter 699 of the Acts of 1983

Standards: Department of Public Health Early Intervention Operational Standards,
Section V

Additional State Regulations

Certification of Educational Personnel 603 CMR 7.00

Approval of Private Special Education 603 CMR 18.00
Schools to Serve Publicly Funded Students

Payment of Special Education Costs for 603 CMR 22.00
METCO Students

Student Record Regulations 603 CMR 23.00

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Chapter 1 - Definitions

100.0 Definitions

As used in these regulations, the following words and abbreviations shall have the following meanings:

- 101.0 "Administrator of Special Education" - the person who has responsibility for supervising the provision of all special education in the school district as provided in ¶200.0
- 102.0 "Bureau of Special Education Appeals" - the Bureau within the Department which conducts due process hearings and mediation pursuant to M.G.L.c.71B, §3, c.30A, §§10 and 11, 20 U.S.C. §1415 and Chapter 4 of these regulations.
- 103.0 "Child" - school age child: any person of ages three through twenty-one up to his/her twenty-second birthday, who has not obtained a high school diploma or its equivalent.
- 104.0a "Child in need to special education" - a child who has been determined to need special education in accordance with the provisions of ¶321.0, or has been referred to a program described in ¶502.7 (home or hospital program). Such determination or referral must be based upon a finding that a child, because of a disability consisting of a developmental delay or an intellectual, sensory, neurological, emotional, communication, physical, specific learning or health impairment or combination thereof, is unable to progress effectively in regular education and requires special education services in order to successfully develop the child's individual educational potential. Pursuant to M.G.L. c.71B, §1, no child shall be determined to be a student with special needs solely because the child's behavior violates the school's disciplinary code. Use of the word disability in this section shall not be used to provide a basis for labeling or stigmatizing the child, or defining the needs of the child and shall in no way limit the services, program, and integration opportunities provided to the child.
- 104.0b The terms contained in ¶104.0 (a) shall be defined as follows:
- (i) Disability - One or more of the following impairments:
- Developmental Delay - The learning capacity of a young child (3-8 years old) is limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; self-help skills.
- Intellectual - The capacity for performing cognitive tasks, functions, or problem solving is significantly limited, impaired, or delayed and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; difficulty understanding abstract concepts.
- Sensory - The capacity to see, even with correction, and/or hear is limited or impaired and is exhibited by one or more of the following: reduced performance in visual and/or hearing acuity tasks; difficulty with written and/or oral communication; difficulty with understanding visual and/or auditory information as presented in the environment.
- Neurological - The capacity of the child's nervous system is limited or impaired and is exhibited by difficulties in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions.

Emotional - The capacity to manage individual or interactive behaviors is limited, impaired, or delayed and is exhibited by difficulty which persists over time and in more than one setting in one or more of the following areas: the ability to understand, build, or maintain interpersonal relationships; the ability to react/respond within the established norms; the ability to keep normal fears, concerns, and/or anxieties in perspective; the ability to control aggressive and/or angry impulses or behavior.

Communication - The capacity to use expressive and/or receptive language is limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language.

Physical - The capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement within the environment; performing basic life functions.

Specific Learning - The capacity to use one or more of the basic psychological processes involved in understanding or in using spoken or written information is limited, impaired, or delayed and is exhibited by a significant discrepancy between achievement and intellectual ability in one or more of the following areas: listening, reading, thinking, speaking, writing, spelling, computing, calculating.

Health - The physiological capacity to function is limited or impaired and is exhibited by one or more of the following: limited strength, vitality, or alertness; difficulty in performing basic life functions.

- (ii) To progress effectively in regular education - To make documented growth in the acquisition of knowledge and skills, including social/emotional development, within regular education according to chronological age and the individual educational potential of the child. For the purpose of this definition, regular education includes early childhood, preschool, academic, non-academic, and vocational programs and activities.

105.0 "Collaborative" - two or more school committees acting jointly pursuant to M.G.L. c.40, §4E

106.0 "Consent" - agreement by a parent who has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication, understands and agrees in writing to the carrying out of the activity, and understands that the granting of consent is voluntary and may be revoked at any time. The consent describes the activity and lists the records (if any) which will be released and to whom.

107.0 "Days" - calendar days, unless otherwise specified in the regulations.

108.0 "Division" - the Division of Special Education of the Department of Education.

109.0 "Educational advocate" - a person assigned in accordance with ¶212.0 to act in special education matters on behalf of a child who has been referred for evaluation or is in need of special education, when parents are unknown or unavailable, or when the child is in the custody of a state agency and the parents do not retain educational decision-making rights. "Educational advocate" is the Massachusetts term for "surrogate parent" as used in 20 U.S.C. §1415(b) (2) (B) and 34 C.F.R. §300.514.

- 110.0 "Free appropriate public education" (FAPE) - special education and related services which: a) are provided at public expense, under public supervision and direction and without charge; b) meet state education standards; c) include preschool, elementary school or secondary education; d) are provided in conformity with an individualized educational plan which meets the requirements of these regulations; and e) assure maximum possible development.
- 111.0 "Guardian" - an individual appointed by the Probate Court for the legal care and management of a minor, mentally ill, or mentally retarded person or other person deemed to be incompetent. This type of legal action terminates at age 18 for a minor child and for all other persons when it is no longer needed, as determined by the Court.
- 112.0 "Hearing" - the due process administrative hearing procedures conducted by Bureau of Special Education Appeals hearing officers under Chapter 4 of these regulations.
- 113.0 "Independent evaluator" - an individual or group of individuals who are not employed by the public school, who are registered, certified, licensed or otherwise approved to perform the assessments requested by the parent pursuant to §328.0, and who abide by the rates set by the state agency responsible for setting such rates.
- 114.0 "Individualized Educational Plan" (IEP) - the plan containing the elements described in §§322.0 and 323.0.
- 115.0 "Institutions under the control of the Departments of Mental Health, Mental Retardation, Public Health, and Youth Services" - any state school, state hospital, or state hospital school under the control of the Departments of Mental Health, Mental Retardation, or Public Health, or secure facility and secure detention facility under the control of the Department of Youth Services, which contains one or more resident children in need of special education.
- 116.0. "Interagency Children's Service Team" - a team, established and operated in accordance with the provisions of §503.2(j) and M.C.L. c. 28A, §6A and which is composed of representatives of the following agencies: The Office for Children, whose representative shall be chairperson; the Department of Education, Social Services, Public Health, Mental Health, Mental Retardation, Youth Services, and Public Welfare, the Massachusetts Rehabilitation Commission, the Commission for the Blind, the Commission of the Deaf and Hard of Hearing; any other agency within the Executive Office of Health and Human Services, or any other agency as deemed necessary by the Commissioner of the Office for Children to ensure delivery of appropriate and needed services to a child.
- 117.0 "Kindergarten" - the year of schooling commencing one year immediately prior to conventional first grade, or in the case of a kindergarten program of more than one year, the first year of the program.
- 118.0 "Least restrictive environment" - the program and placement which ensures that, to the maximum extent appropriate, a child in need of special education, including children in public or private institutions or other care facilities, is educated with children who are not in need of special education and that special classes, separate schooling or other removal of a child in need of special education from the regular education environments occurs only when the nature or severity of the special needs is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- 119.0 "Liaison" - the member of the evaluation team who is designated by such team to perform the functions described in §335.0.

- 120.0 "Mediation" - the process of voluntary, informal dispute resolution available to parents and school committees under the provisions of Chapter 4 of these regulations.
- 121.0 "Parent Advisory Council" (PAC) - the advisory council described in ¶600.0.
- 122.0 "Parent" - father or mother, guardian, person acting as a parent of the child, or educational advocate who has been appointed in accordance with Division procedures. A student who is eighteen years of age or older has the legal right to act on his/her own behalf in place of the parent in accordance with ¶207.2.
- 123.0 "Program prototype" - general program category as defined in ¶502.0.
- 124.0 "Public school regular education facility" - a building under the supervision of a school committee in which more than seventy percent of the children educated therein are children without need of special education.
- 125.0 "Regular education program" - the school program and pupil assignment for children without the need of special education. This program normally leads to college preparatory or technical education or to a career, has a typical grade progression from kindergarten to high school, and offers a full range of supportive services which are normally provided to children without need of special education.
- 126.0 "Regular transportation vehicle" - a vehicle used to transport children without need of special education transportation.
- 127.0 "Related services" - transportation and such developmental, corrective, and other supportive services as are required to assist a child in need of special education to benefit from special education, including those described in ¶503.0.
- 128.0 "School committee" - the school committee of any city, town or regional school district, or the governing body of any public vocational school system, or its designee.
- 129.0 "Special education" - specially designed instruction at no cost to the parent(s) or guardian to meet the unique needs of a child in need of special education, including development of the child's education potential. The term shall include: a) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and b) instruction in physical education.
- 130.0 "State Advisory Commission" (SAC) - the advisory committee described in ¶604.0.
- 131.0 "TEAM" - unless otherwise indicated, refers to the evaluation team described in ¶311.0.
- 132.0 "Transition services" - a coordinated set of activities for a student, designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

133.0 "Vocational education" - the approved type of education, purposefully designed to educate and prepare students of all ages for employment and continuing academic and occupational preparation through a balance of classroom instruction, supportive services and occupational experience to develop life-long skills so that upon completion of vocational technical programs, students are qualified to pursue, directly or indirectly, opportunities emanating from such vocational technical programs.

Chapter 2 - General Provisions

The following provisions shall be generally applicable to all of the chapters in these regulations.

200.0 Administrator of Special Education.

Each school committee shall appoint a person to be its Administrator of Special Education. Such appointment shall be made in accordance with the following:

200.1 Each school committee with four thousand or more children enrolled in its school system shall appoint a person qualified pursuant to the requirements of the Board of Education's Regulations for the Certification of Educational Personnel (603 CMR 7.00) to be its Administrator of Special Education. Such Administrator shall devote full time to the duties involved in supervising the provision of all special education in the school system, including those duties listed in ¶310.0.

200.2 Each school committee with less than four thousand children enrolled in its school system shall appoint a person qualified pursuant to the requirements of the Board of Education's Regulations for the Certification of Educational Personnel (603 CMR 7.00) to be its Administrator of Special Education. Such Administrator shall have the duties involved in supervising the provision of all special education in the school system, including those duties listed in ¶310.0. Such Administrator may have other duties.

200.3 Notwithstanding the provisions of ¶¶200.1 and 200.2 the school committee of any city, town, or school district may, to meet its obligations under this section, with the approval of the department, enter into an agreement with any other school committee to jointly appoint an administrator of special education.

201.0 Options available to school committees for satisfying the requirements of these regulations.

The following shall apply to the satisfaction of all of the requirements of these regulations by school committees:

201.1 Each school committee shall have the following options in satisfying any of the requirements of these regulations:

201.1(a) It may satisfy such requirements itself.

201.1(b) It may enter into a written agreement or contract to satisfy such requirements through a collaborative approved by the Department under the provisions of M.G.L. c. 40, §4E. Any facility operated by a collaborative shall be treated, for the purpose of these regulations, as if it were located within the jurisdiction of the school committees which are members of such collaborative.

201.1(c) It may enter into a written agreement or contract with a public or private school, agency, or institution to satisfy such requirements.

201.2 A school committee may enter into an agreement with other agencies to share the cost of providing special education. With regard to residential placements, the prototype assigned shall reflect that portion of the program for which the school committee is required by these regulations to bear the cost.

201.3 In satisfying the requirements of these regulations, school committees may not require parents of children in need of special education to bear the cost of such special education. They may, however, encourage but not require parents to use third party benefits or insurance coverage to pay such costs. Such benefits or insurance coverage may be used provided that the school committee has informed the parents of the school committee's obligation to pay any financial loss which may result to the parents from such use, including decrease in available lifetime coverage, increase in premiums under an insurance policy, deductibles and copayments.

201.3(a) If parents choose to use third party benefits or insurance coverage, nothing in these regulations relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services to a child in need of special education.

201.3(b) Nothing in these regulations relieves a school committee of its responsibility to deliver services while it is investigating the possibility of third party coverage for a particular service required by the child's IEP.

202.0 Responsibility for children based upon residence and enrollment.

202.1 Subject to the provisions of Chapter 7 of these regulations and M.G.L. c.76 §12A and its implementing regulations (603 CMR 22.00), the requirements of these regulations are applicable to school committees under the following circumstances:

202.1(a) Children who live with their father, mother, or guardian, or who are eighteen or over and who are not under the supervision of a human service agency but have established their own residence as adults are the responsibility of the school committees with jurisdiction over the cities, towns or school districts in which they live.

202.1(b) Children who have been placed or are funded by the Department of Social Services in foster homes are the responsibility of the school committee with jurisdiction over the city, town, or school district where the foster home is located.

202.1(c) Children who live and receive special education services at a private residential school, hospital, pediatric nursing home, Department of Mental Health school, or Department of Public Health hospital school, Department of Youth Services facility, Department of Corrections or County House of Corrections facility are the responsibility of the school committee(s) which has (have) jurisdiction over the city, town or school district where the child's father, mother or guardian lives.

202.1(d) Children who are in a living situation other than that described in ¶202.1(a), (b), or (c), including but not limited to group homes funded by state agencies, foster homes funded by state agencies other than the Department of Social Services, living situations for people eighteen years of age and over which are funded or supervised by a human service agency, crisis or respite facilities, and relative's homes which are not funded by the Department of Social Services, are the responsibility of the school committee which has jurisdiction over the city, town, or school district where such children live. Where such child has a father, mother or guardian living in the Commonwealth and the child, if over eighteen, has not established a separate residence as defined in ¶202.1(a), the school committee responsible for such child may bill and shall receive payment for the costs of educating the child from the school committee(s) with jurisdiction over the city, town, or school district where the father, mother or guardian lives. That school committee is required to pay the costs of educating such child upon receipt and verification of such a bill. If the child requires a private special needs day or residential school or educational collaborative program, the school committee(s) of the city,

town or district where the mother, father or guardian resides shall pay the costs directly to the private school or educational collaborative, pursuant to agreement of the responsible school committee(s). The school committee providing educational services to the child shall invite the Administrator of Special Education of the school committee(s) of the city, town or district where the mother, father or guardian resides to participate in the TEAM Evaluation and placement of the child, provided that nothing in this paragraph shall limit the right of the child to timely evaluation and placement in accordance with these regulations. The school committee(s) of the city, town or district where the father, mother or guardian resides shall be liable in contract to the school committee responsible for providing education to such child for the costs of the educational services.

202.1(e) The Department of Education shall assign a city, town or school district to be responsible for providing special education to children in a living situation described in ¶202.1 (c) or (d) who have neither a father, mother nor guardian living in the Commonwealth, or who have neither a father, mother or guardian whose residence can be determined in the Commonwealth, or who have been voluntarily surrendered for adoption by his or her father, mother or guardian, or who have been freed for adoption by the Probate Court. Nothing in this regulation shall require a school committee to provide special education to a student whose parents or guardian live outside the Commonwealth and have placed the student in an education program in the Commonwealth or who maintain contact with the student who remains in the Commonwealth.

202.1(e)(i) The Department of Education shall use the following criteria to assign a city, town, or school district responsibility for the provision of special education to a child under this section:

- (a) The last known Massachusetts residence of the child's father, mother, or guardian prior to moving from the Commonwealth, dying, surrendering the child for adoption or having parental rights terminated.
- (b) When a child's parents are separated or divorced and neither the father nor mother resides in the Commonwealth, the last known residence of the last parent to have lived in Massachusetts.

202.1(e)(ii) Using the above criteria, the Division shall notify in writing the Administrator(s) of Special Education of the assigned school district(s), who shall be afforded the opportunity to present any additional information which would bear upon the Division's determination. Upon notification of responsibility for provision of special education to a child under this paragraph, the school committee(s) shall immediately begin to provide such services in accordance with the requirements of these regulations. Until such notification, the school district that had been responsible for providing special education to such child under these regulations shall continue to be responsible.

202.1(f) If a father, mother or guardian resides in an institutional setting in Massachusetts, including, but not limited to, a correctional facility, a hospital, a nursing home or hospice, or a mental health facility, responsibility for fulfilling the requirements of these regulations rests with the school district of residence of such mother, father or guardian immediately prior to his/her entry into such institutional setting.

202.1(g) Where a child is in a living situation described in ¶202.1(c) or ¶202.1(d) and the child's father and mother live in two different school districts, such school districts shall be jointly responsible for fulfilling the requirements of these regulations. Nothing in this paragraph shall limit the right of the child to timely evaluation and placement in accordance with these regulations.

202.1(h) Nothing in these regulations shall limit the educational rights of homeless children and parents afforded under the McKinney Homeless Assistance Act, 42 U.S.C. §11431 et seq.

202.2 In addition to the provisions of ¶202.1, and in accordance with ¶337.0, the school committee of each regional school district and the governing body of a regional vocational school district or independent vocational school district shall be solely responsible for satisfying all requirements of these regulations, unless exceptions are otherwise specified, for all children enrolled in the schools under the control and supervision of such school committees or governing bodies.

202.3 The evaluation and placement of a child who has moved or whose family has moved from another community shall be governed by ¶332.0 of these regulations.

203.0 Communications with parents and children generally; where the primary language of the home is other than English; where the parents are unable to read or are blind or deaf.

Each school committee shall ensure that all communications and meeting with parents or with children pursuant to these regulations comply with the following provisions.

203.1 Communications shall be in simple and commonly understood words.

203.2 Communications shall be in both English and the primary language of the home, if such primary language is other than English. Any interpreter used to implement this provision shall be fluent in the primary language of the home.

203.3 Where the parents or the child are unable to read in any language or are blind or deaf, communications required pursuant to these regulations shall be made orally in English or with the use of a foreign language interpreter, in Braille, in sign language, via TDD, or in writing, whichever is appropriate.

204.0 Implementation in a manner different from that required by these regulations.

Each school committee may submit in writing a proposal for approval by the Division for the satisfaction of any requirement in these regulations in a manner different from that specified in these regulations. The Division may approve such proposal if it shows substantial promise of contributing to improvements in the methods for meeting the goals of these regulations and if such proposal does not conflict with any provision of law. No such proposal shall be implemented until approved by the Division.

205.0 Children attending private schools completely at private expense.

205.1 Nothing in these regulations shall be construed to limit the right of parents to have their children educated at private schools, completely at private expense.

205.2 In accordance with the Individuals with Disabilities Education Act (IDEA), each school committee shall provide special education designed to meet the needs of children who are attending

private schools at private expense and whose parents reside in the jurisdiction of the school committee. The school committee shall provide to such children genuine opportunities to participate in the public school special education program, consistent with constitutional limitations, in accordance with the following provisions:

205.2(a) The school committee shall provide or arrange for the provision of an evaluation and IEP, in accordance with Chapter 3, for any private school child whose parent resides in the jurisdiction of the school committee, if the child is referred for evaluation by one of the persons specified in ¶316.0. The evaluation may take place in the public school, the private school, or an appropriate contracted facility, provided that the school committee shall insure that a representative of the child's private school is invited to participate in the evaluation and the writing of the IEP.

205.2(b) The school committee shall provide or arrange for the provision of the special education required by the child's IEP, provided that the special education services shall be provided in a public school regular education facility or other appropriate facility.

205.2(c) If the private school in which the child is enrolled is outside the jurisdiction of the school committee, the school committee may contract with another school committee or other appropriate facility in which public school children receive special education to provide special education to the child.

205.2(d) Special education provided by the school committee to a private school child shall be comparable in quality, scope and opportunity for participation to that provided to public school children with needs of equal importance. Programs in which both public and private school children participate may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

206.0 Early Childhood.

The requirements of these regulations shall apply to children three and four years of age insofar as the requirements may be adapted to reflect the fact that such children are not in public school. Children of ages three and four shall qualify as children in need of special education in accordance with the provisions of ¶104.0. The procedures in chapters three and five for evaluation and placement of children shall be appropriately adapted for children three and four years of age to reflect the fact that such children are not in public school. However, ¶¶309.0 and 310.0 and programs in prototypes 502.1 through 502.6 shall not apply to such children.

207.0 Children of ages sixteen through twenty-one.

207.1 The requirements of these regulations shall not be construed to require the attendance at school of children ages sixteen through twenty-one who have left school. Attendance at school by such children shall be completely voluntary. Each school committee shall advise, in writing, children of ages sixteen through twenty-one who have left or who are about to leave school of their rights under these regulations and all program options available to them in the school system, and shall document these efforts. Copies of such notice will be sent to parents.

207.2 A child of ages eighteen through twenty-one shall be entitled to all of the rights given to children by these regulations and all of the rights given to adults by applicable laws.

208.0 Parental consent.

208.1 Each school committee shall obtain written parental consent before conducting an initial evaluation or making an initial placement of a child in a special education program under these regulations. Written parental consent shall also be obtained before conducting a reevaluation and before placing a child in a special education placement subsequent to the initial placement in special education subject to the provisions of this paragraph and ¶338.6.

208.2 A parent may revoke consent at any time. Except for initial evaluation and initial placement and as prescribed by these regulations, consent may not be required as a condition of any benefit to the child.

208.3 If, after following the procedures required by these regulations, the school committee is unable to obtain parental consent to a reevaluation or to placement in a special education program subsequent to the child's initial placement in special education, or the parent revokes consent to such reevaluation or placement, the school committee shall consider with the parent whether such action will result in the denial of a free appropriate public education to the child. If, after consideration, the school committee determines that the parent's failure or refusal to consent, or revocation of consent will result in a denial of a free appropriate public education to the child, it shall seek resolution of the dispute through the procedures provided in Chapter 4. Participation by the parent in such consideration shall be voluntary and the failure or refusal of the parent to participate shall not preclude a school committee from taking appropriate action pursuant to Chapter 4 to resolve the dispute.

209.0 Procedures when parent fails or refuses to participate.

209.1 Where the participation of a parent is required pursuant to Chapter 3 of these regulations and such parent fails or refuses to participate, the school committee shall make and document efforts to contact the parent. Such efforts may include letters, written notices sent by certified mail, telephone calls or, if appropriate, TTY communications to the home, and home visits at such time as the parent is likely to be home. Efforts may also include seeking assistance from a community service agency to secure parental participation.

209.2 If the above efforts are attempted and documented and the school committee, as a result of the parent's failure to participate, is unable to secure parental consent to a reevaluation or placement subsequent to the child's initial placement in a special education program, the school committee shall proceed in accordance with ¶208.3.

209.3 Nothing in this paragraph shall prevent a school committee from making a court referral for appropriate action.

210.0 Right of parents to be accompanied to meetings and conferences.

Where a meeting or conference with parents is required or permitted by these regulations, such parent at his/her expense shall have the right to be accompanied and represented by persons of his/her choice.

211.0 Procedures for the identification of children in need of educational advocates: Notice.

Each school committee, and each state agency having custody of a child who has been referred for evaluation or is in need of special education, shall develop thorough procedures and shall cooperate to identify children in need of educational advocates. If a child's parent, as defined in ¶122.0 cannot be identified or the parent's whereabouts are unknown after reasonable efforts to identify or locate such parent, or the child is in the custody of a state agency and the parents do not retain educational

decision-making rights, the school committee shall immediately notify the Division by forwarding a completed copy of the educational advocate referral notice to the Division.

212.0 Procedures for the assignment of educational advocates: qualifications and duties of educational advocates: Notice.

The Division shall, within fifteen days of receipt of the notice required in §211.0, review the school committee or state agency documentation to ensure that the child referred is a child in need of an educational advocate.

212.1 The Division, after ensuring that the child is in need of an educational advocate, shall assign or arrange for the assignment of a qualified educational advocate. The Division shall ensure that:

212.1(a) the educational advocate is not an employee of a public agency involved in the education or care of the child;

212.2(b) the educational advocate has no interests that conflict with the interests of the child s/he represents; and

212.1(c) the educational advocate has knowledge and skills that ensure adequate representation of the child.

212.2 The educational advocate shall have the same rights and responsibilities as a parent in special education matters relating to a child, including the right to represent the child in the identification, evaluation and educational placement of the child and in the provision of a free appropriate public education.

212.3 Whenever the Division appoints an educational advocate for a child, the Division shall notify in writing the appropriate school committee and any state agency that has custody of the child. That notice shall include the name of the child and of the duly appointed educational advocate.

212.4 Social workers, supervisors, and all other employees of the Department of Social Services (DSS) are expressly prohibited from serving as educational advocates for any student in the care of or receiving services from DSS, and are also prohibited from accepting, rejecting or otherwise signing the IEPs of any such student.

213.0 Uniform procedures and forms.

The Division shall prepare standard forms for some or all of the notices to parents and for some or all of the other official notices required by these regulations. The Division shall also prepare standard forms for some or all of the other requirements of these regulations. Where the Division has prepared one or more of the above mentioned standard forms, each school committee shall duplicate and utilize such forms in order to satisfy the requirements of these regulations.

214.0 Enforcement: Non-Compliance; withholding of funds.

The Division shall recommend to the Board of Education that it withhold funds for special education from cities, towns, school districts or private schools or agencies which do not comply with regulations or statutes related to special education or do not carry out plans for such compliance within a reasonable period of time; provided, however, that nothing contained in this paragraph shall be construed to prevent the Board of Education from withholding state and federal funds to the extent it deems necessary as provided in M.G.L. c.15, §1G.

215.0 Complaint Management System.

There shall be a Complaint Management System in accordance with Department of Education guidelines, which will provide for the investigation of complaints and the enforcement of compliance with these regulations, as well as with all other statutes and regulations relating to the provision of publicly funded education. Any party wishing to file a complaint may do so through the Department whose responsibility it shall be to investigate such complaint. Copies of written complaint management guidelines and procedures are available upon request.

216.0 Further guidelines and directives.

The Division shall issue periodic guidelines and directives to further define, clarify, interpret and explain these regulations. Where required by M.G.L. c.71B, these shall be issued jointly with such other agency(ies) as required by statute.

217.0 Revision.

These regulations shall be reviewed no less than once every five years by the Department of Education with the advice of the SAC and, as required by M.G.L. c. 71B, jointly with such other agency(ies) as required by statute.

218.0 Severance clause.

If any provision contained in these regulations or the application thereof to any person or circumstance is held invalid, the remainder of the regulations and the application of the provision in question to other persons not similarly situated or to other circumstances shall not be affected thereby.

Chapter 3 - Identification, Referral, and Evaluation

300.0 Identification: Register of children in need of special education.

Each school committee shall maintain as part of the register required by M.G.L. c. 72, §2 an annual ever-current register of children in need of special education under its jurisdiction, listing the following information for each child:

- 300.1 Name of child
- 300.2 Address and telephone number
- 300.3 Date of birth
- 300.4 Full name of parent
- 300.5 Date referral received
- 300.6 Date(s) of TEAM meetings and reviews
- 300.7 Date of acceptance or rejection of IEP
- 300.8 Beginning date of special education
- 300.9 Current program prototype
- 300.10 Name of school or other place where special education is delivered

301.0 Identification: Child count.

Each school committee shall file as part of the annual school report required by M.G.L. c. 72, §A to be filed on or before May 1 of each school year with the Commissioner of Education, a count of all children receiving special education under its jurisdiction. Such report shall list the number of children in each program prototype and any other information required by the Department of Education on its reporting form. Such information shall be reported in an accurate manner without revealing the identify of individual children or their parents.

302.0 Identification: Presumption that a child is without need for special education.

A child shall be presumed to be without need for special education unless entered to the register described in ¶300.0. No school committee shall enter a child to such register unless such child has been determined to be a child in need of special education in accordance with these regulations. Where such a determination has been made, such child shall be entered immediately to the register. Children in special education programs as of September 1, 1974, who continue to need or receive special education, shall also be entered to the register. A child of compulsory school age who has not been entered to such a register shall be considered a child entitled to attend a regular education program; unless such child has been lawfully excluded from such program.

303.0 Identification: Child search; plan.

Each school committee shall make a continuous and systematic effort to identify children in need of special education. Each school committee shall submit for approval to the Division on a date and in a form to be determined by the Division, a plan under ¶501 describing the specific manner in which the school committee shall make such effort during the subsequent school year. The school committee shall implement such plan after it has been approved.

304.0 Identification: Child search; elements.

In order to identify children in need of special education, each school committee shall provide or arrange for the provision of the following: (the method of such provision shall be described in the plan required by ¶303.0)

304.1 Annual registration optional on the part of the parent, of all children of ages three and four. The following shall occur at such registration:

304.1(a) Parents shall be requested but not required to submit a copy of the report of the most recent physical examination of their child and any other information relevant to determining whether such child needs special education.

304.1(b) Parents shall be given information about the purpose and availability of orientation sessions and screening for their children.

304.2 Annual or more frequent orientation workshops for parents of children ages three and four.

304.3 Kindergarten entry screening and screening for children ages three and four whose parents have requested such screening because they believe their children have a reasonable likelihood of needing special education.

304.4 Physical examination of children attending school in accordance with the regulations of the Department of Public Health.

304.5 Ongoing public information articles and programs in local media, including announcements of times, dates and places of free orientation workshops and free screening.

304.6 Annual or more frequent community-wide communication to all parents to describe the special education which is available and to accept referrals of any child for evaluation. Such communication shall emphasize the availability of programs and services for children of ages three and four and those sixteen through twenty-one.

304.7 Annual or more frequent outreach to and continuous liaison with professional persons in the community, private nursery schools, day care facilities, group homes, organizations of parents of children in need of special education, clinical and health care agencies, early intervention programs, other public, private and parochial schools and school systems, and other agencies and organizations from which promotion or transfer of children in need of special education may ordinarily be expected or which would include children in need of special education. School committees are encouraged to accept referrals from such persons and agencies at the time the child turns two and one-half years old to ensure continuity of services and to ensure that if the child is determined to need special education, the IEP is implemented by the date of the child's third birthday.

304.8 Annual or more frequent outreach to and continuous liaison with Departments within the Executive Office of Health and Human Services and with other appropriate Departments. When an Executive Office of Health and Human Services agency is providing a program of special services to a child under the age of three, on or about the time of the child's second birthday, the agency shall notify the school committee with jurisdiction over the child of the child's identity and the nature of the program the child is receiving. At or about the time the child reaches age two and a half, the Executive Office of Health and Human Services agency shall, with the consent of the child's parent, refer the child to the school committee with jurisdiction for an evaluation, which must be completed so that the IEP is implemented by the date of the child's third birthday if the child is determined to need special education. School committees are encouraged to evaluate all two and one-half year old referred by the Executive Office of Health and Human Services to ensure continuity of services. The Executive Office of Health and Human Services agency shall, with parental consent, designate an appropriate representative of the agency to participate in the evaluation.

305.0 Identification: Early childhood and kindergarten entry screening; personnel.

Each school committee shall utilize for screening of three and four year olds and for kindergarten entry screening personnel who are certified, licensed, approved or board-registered in a specialty area qualifying them to do the specific screening assessment which is being performed and who have experience or training or both in working with three and four year olds, or in the case of kindergarten entry screening, with children of kindergarten entry age.

306.0 Identification: Early childhood and kindergarten entry screening; elements.

Each school committee shall conduct a screening program for three and four year olds, and for all children who are of age to enter kindergarten in September of each year. Such screening shall be an annual survey conducted pursuant to the provisions of this paragraph and §§305.0 and 307.0, and shall be fully described in the plan required by §501.0. Except for the comprehensive health assessment required by §306.1(b), which is intensive in nature, such screening program shall be designed to provide a non-intensive scan of the children being screened in order to identify those children who should be referred for evaluation.

306.1 Kindergarten entry screening shall be completed no later than October 31 of each year, and shall consist of the following elements appropriately adapted for use with children of kindergarten age:

306.1(a) A solicitation from parents through interviews, questionnaires, or other formal and informal techniques of information including: the age at which developmental milestones were attained, existence of possible need for special education, results of previous assessments and evaluation, history of placement in special education programs, history of treatment received for disabilities, and a current description of the child.

306.1(b) A screening by a physician which addresses medical problems that may affect a child's education, such as physical constraints, chronic illness, neurological and sensory deficits, and developmental dysfunction, in addition to any procedures required by regulations of the Department of Public Health.

306.1(c) An appropriate vision screening as prescribed by the regulations and forms of the Department of Public Health for vision screening of school children.

306.1(d) An appropriate hearing screening as prescribed by the regulations and forms of the Department of Public Health for hearing screening of school children.

306.1(e) A screening separately and in integration, of the child's visual, auditory and motor functioning in practical tasks and activities.

306.1(f) A screening of the child's language functioning including comprehension, expressive abilities, maturity of articulation, and grammatical and conceptual development in the English language and in the child's primary language where such language is other than English.

306.1(g) Any screening or assessment described in this paragraph shall be subject to the following:

306.1(g)(i) Any screening or assessments may be waived if the parents arrange at their expense for the results of an equivalent screening or assessment to be presented to the school.

306.1(g)(ii) Any screening or assessment may be waived if an equivalent screening or assessment, in the opinion of the person doing the school screening or assessment, has been completed during the six months prior to the time of the scheduled school screening or assessment and has been made available to the school.

306.1(g)(iii) The principal or the person responsible for the screening shall notify the parents at once of any immediate illness or danger to the child discovered by the screening process and of the procedures the school will follow to insure the child's safety.

306.1(g)(iv) Each person conducting a screening or assessment shall note in the screening or assessment report any difficulties which were observed, incidental to the screening or assessment being conducted, in the child's cognitive, social, or emotional functioning.

306.2 The screening program for three and four year olds shall be comparable in content to the kindergarten entry screening described in ¶306.1, shall be adapted as necessary to be appropriate for children of ages three and four, and shall be optional on the part of the parents of such children.

307.0 Identification: Early childhood and kindergarten entry screening; parent involvement.

Each school committee shall inform the parents of the results of the screening conducted pursuant to ¶306.0 and of the opportunity which shall be provided upon request of the parents, to discuss such results with the appropriate school personnel. Where such results indicate a reasonable likelihood that a child is in need of special education, the following shall apply:

307.1 The results of the screening shall be fully discussed with the child's parents and current or prospective kindergarten teacher. If the child is involved in an early childhood program at the time of the screening, the results shall be discussed fully with the child's early childhood teacher(s).

307.2 If the results of the screening indicate no need for referral for an evaluation, the child may still be referred for evaluation under the provisions of ¶311.0.

307.3 If the child is referred for an evaluation and has recently attended or is currently attending an early childhood program, the child's early childhood teacher(s), with written parental consent, shall be consulted prior to commencing the evaluations in order to acquire from the early childhood teacher(s) information and evaluations that may assist in adequately assessing the child.

308.0 Identification: On-going screening.

Periodic screening of all children shall consist, at a minimum, of those assessments prescribed by the regulations of the Department of Public Health for the physical examination of school children.

309.0 Pre-referral: Limitation.

Prior to referral of a child for an evaluation the principal of the child's school shall ensure that all efforts have been made to meet such child's needs within the regular education program. In addition, all efforts shall be made to modify the regular education program to meet such needs. Such efforts may include, but are not limited to: modification of the curriculum, teaching strategies, teaching environments, or materials; and use of support services, consultative services, and building-based teams to meet the child's needs in the regular education classroom. Such efforts and their results shall be documented and placed in the child's record. Nothing contained in this paragraph shall be construed to

limit or condition the right to refer a child for an evaluation.

310.0 Referral: Determinations required.

No later than five (5) days after the occurrence of any of the conditions described in ¶¶310.1 through 310.3, each school committee shall insure that the following categories of children are referred to the person described in each paragraph for a determination of whether either pre-referral efforts pursuant to ¶309.0 or a referral for an evaluation should be made:

310.1 The principal, or his/her designee, of the school attended by such child shall determine whether pre-referral efforts pursuant to ¶309.0 or a referral for evaluation should be made if any of the following conditions exist and shall promptly and in writing notify the parents which condition exists, if a referral is being made, and of their right to make such referral.

310.1(a) Any child who at mid-year presents a substantial risk of non-promotion. For purposes of this paragraph, a substantial risk of non-promotion shall be considered to exist if a child is failing in two or more non-elective subjects.

310.1(b) Any child who fails to be promoted at the end of the year.

310.1(c) Any child who has been suspended for more than five (5) school days in any quarter or excluded from school.

310.1(d) Any child who has been absent without medical excuse more than fifteen (15) school days in any quarter.

310.1(e) Any child ages sixteen through twenty-one who is planning to leave school without a high school diploma.

310.2 A child who has been committed or referred to the Department of Youth Services, and who is currently under its jurisdiction. An official of the Department of Youth Services shall be responsible for determining whether a referral for an evaluation should be made.

310.3 A child who demonstrates a substantial negative change in alertness, learning, or behavioral capacity within two weeks after returning to school after illness with the mumps, measles, chicken pox, encephalitis or other high fever, or after cerebral injuries involving loss of consciousness. The school nurse shall inquire into the condition of such child within such two week period, and shall be responsible for determining whether a referral for an evaluation should be made.

311.0 Evaluation: Referral; who can refer.

A child may be referred by any of the following to the Administrator of Special Education of the appropriate school committee for an evaluation at any time.

311.1 A school official, including a teacher.

311.2 A parent of such child.

311.3 A judicial officer.

311.4 A social worker.

311.5 A family physician for the family of such child.

311.6 A person having custody of the child.

311.7 A child who wishes to be referred for an evaluation, or any other person, may request one of

the persons specified in §§311.1 through 311.6 to make a referral. The person specified in these paragraphs who receives such a request may refer the child for an evaluation.

312.0 Evaluation: Plan for conducting.

Each school committee shall submit for approval to the Division on a date and in a form to be determined by the Division, a plan under §501.0 describing the specific manner in which that school committee will conduct its evaluations during the subsequent school year. The school committee shall implement such plan after it has been approved. Such plan shall contain the following:

312.1 Specification of the personnel to be involved in the evaluation process, including the types of professionals who will be performing evaluation assessments.

312.2 Specification of the projected number of children who will receive evaluations.

312.3 Specification of the places where evaluations will take place.

312.4 Specification of other public or private schools which are projected to be involved in providing evaluations.

313.0 Evaluation: Administrator of Special Education; duties.

The duties of the Administrator of Special Education, appointed pursuant to the provisions of §200.0, shall include the following, provided however, that the duties described in §§313.2 through 313.11 may be performed in whole or in part by the Administrator's designee.

313.1 Exercising general supervision over the identification, referral, evaluation and program planning for all children in need of special education.

313.2 Providing for the register and child count required by §§300.00 and 301.0.

313.3 Ensuring that current records are kept of all information relating to evaluations required to be maintained by these regulations.

313.4 At his/her discretion, serving as a member of a TEAM, a TEAM chairperson, or both.

313.5 Determining the organization of the TEAM and its composition in accordance with §§314.0, 315.0, 316.0 and 320.0.

313.6 Receiving referrals of children for evaluations and assigning such children to evaluations.

313.7 Maintaining a current list and description of program options available for children in need of special education as described in §501.0.

313.8 Working jointly with the TEAMs to arrange for the services which will meet the child's needs as specified in the IEP.

313.9 Working jointly with the TEAMs and the Division when making placements of children in need of special education pursuant to §504.0.

313.10 Determining and assigning personnel required to provide the services specified in a child's IEP.

313.11 Working jointly with the TEAMs in carrying out any other duties required by these regulations.

314.0 Evaluation: TEAM's composition for writing the IEP.

For each individual evaluation, the persons described in §§314.1 to 314.6 shall meet as provided in §319.0 and shall write an IEP for the child if such child is found to require special education. In addition, those persons described in §314.7 shall be included in the TEAM meeting at the discretion of the Administrator of Special Education. The Administrator of Special Education shall ensure that the TEAM includes persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

314.1 A representative of the school committee, other than the child's teacher, who is qualified to provide or supervise the provision of special education and who shall act as the chairperson or designates a TEAM member to act as chairperson.

314.2 A teacher who has recently had or currently has the child in a classroom or other teaching situation.

314.3 One or both of the child's parents.

314.4 The child, at his/her request, if such child is of ages fourteen through twenty-one. The TEAM Chairperson shall notify any child who is at least fourteen, for whom an IEP is to be written, of his/her right to be present at and to participate in the writing of such IEP and shall keep a written record of such notification and of the child's response. If the child is younger than fourteen, the parent may invite such child to be present at and participate in the writing of such IEP if the parent decides that such presence is necessary or desirable and in the best interest of the child. A child who attends an evaluation meeting may be accompanied by anyone of his/her choice.

314.5 Other individuals at the request of the child's parents. However, if the parents request that individuals outside the school system participate, such participation shall be at the parents' expense.

314.6 Other individuals who have conducted assessments as described in §320.0 as part of the evaluation, provided that the TEAM shall include at least one teacher or other specialist trained in the area of the child's suspected special needs. In the case of a comprehensive health assessment, a registered nurse may represent the physician.

314.7 Other individuals, as determined by the Administrator of Special Education, who may be necessary to write an IEP for the child. These individuals may be, but are not limited to: a registered nurse, a social worker with a masters degree in social work, or a certified guidance or adjustment counselor; a certified psychologist or one licensed to practice in Massachusetts; a regular or special education teacher; a consulting teacher; an approved vocational educator; an early childhood specialist; a certified reading specialist.

314.8 In the case of a person graduating from high school or reaching age 22 who is in need of continuing services from the adult service system, a liaison from the assigned transitional agency pursuant to M.G.L. c.71B, §12A-12C, (Chapter 688 of the Acts of 1993) shall be notified and invited to attend the TEAM meetings at least two years before the anticipated date of exit.

315.0 Evaluation: TEAMs; specialists.

For the evaluation of any child, specialists who are registered, licensed, or otherwise approved by the Commonwealth of Massachusetts may be added to the TEAM, after a request for such specialist to the Administrator of Special Education by a member of the TEAM who is conducting any of the assessments as part of the evaluation. The following shall apply to the selection of such specialist:

315.1 In granting a request for a specialist, the Administrator of Special Education shall be governed solely by the considerations of the needs of the child and the child's family.

315.2 The Administrator of Special Education shall obtain parental consent before obtaining a specialist.

316.0 Evaluation: TEAM's; composition in certain situations.

Where a child has been referred for an evaluation and at the time of such referral such child is in a hospital or is otherwise living away from home, the following shall apply:

316.1 The school committee within whose jurisdiction such child resides shall provide or arrange for the provision of the evaluation.

316.2 The evaluation shall take place within the geographical jurisdiction of the school committee unless moving the child to such jurisdiction would seriously endanger the health or safety of such child or of others. Such determination shall be made jointly by the child's parents and the school committee; provided, however, that the child shall not be moved without parental consent.

316.3 In the event that a child cannot be moved back to the geographical jurisdiction of the school committee or the parents refuse to give their consent for such moving, the school committee shall provide or arrange to have provided an evaluation at the place where the child is located. Such evaluation shall be equivalent in all respects to the evaluation which would have been given if the child had been moved back to the geographical jurisdiction of such school committee.

317.0 Notification of parental rights.

The school committee shall send a written notice to the parents of a child with suspected or identified special needs and, where appropriate, to such child in accordance with the following provisions. Such notice will conform to the requirements of §203.0. If, pursuant to §203.0, the written notice required by this paragraph must be provided verbally or in some other mode of communication that is not written language (such as sign language), the school committee shall keep written documentation that notice has been provided in such manner, the content of the notice and the steps taken to ensure that the parent and child, where appropriate, understand the content of the notice.

317.1 Notice shall be provided whenever the school committee proposes or refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the child.

317.1(a) The occasions on which notice shall be provided pursuant to this paragraph include but are not limited to:

317.1(a)(i) proposal to conduct an initial evaluation, reevaluation or emergency evaluation;

317.1(a)(ii) offer of a new or amended IEP;

317.1(a)(iii) finding of no special needs;

317.1(a)(iv) suspension or exclusion of a child with special needs for more than ten (10) cumulative days in the school year;

317.1(a)(v) any proposed change of placement;

317.1(a)(vi) termination of services, including graduation from high school before age 22.

317.1(b) Unless a specific time period is stated in the regulations, the notice shall be provided a reasonable time before the proposed or refused action.

317.1(c) If the action proposed by the school committee is an initial evaluation or reevaluation, the school committee shall send the written notice required by this paragraph within five (5) days after the referral for evaluation or reevaluation by any of the persons authorized by these regulations to make such referral. If the last day for sending the notice is a day when school is closed, the time allowed for the notice shall be extended to the next day when school is open. If a referral is made within the last five days of the school year, the notice shall be sent within seven (7) days.

317.2 Whenever a notice is required under ¶317.1, such notice shall include:

317.2(a) A description of the action proposed or refused by the school committee, an explanation of why the school committee proposes or refuses to take the action, and a description of any options the school committee considered and the reasons those options were rejected;

317.2(b) A description of each evaluation procedure, test, record, or report the school committee uses as a basis for the proposal or refusal;

317.2(c) A description of any other factors which are relevant to the school committee's proposal or refusal.

317.2(d) If the action proposed by the school committee is an evaluation or reevaluation:

317.2(d)(i) The name of the person who made the referral for evaluation or reevaluation;

317.2(d)(ii) The nature of the evaluation or reevaluation process, including a description of the specific assessments that will be conducted;

317.2(d)(iii) The parents' right to request a medical, psychological and/or home assessment if such assessment(s) are not proposed by the school committee;

317.2(d)(iv) The date when the evaluation or reevaluation will begin and of the right of the parents and, if the child is at least fourteen, the child, to meet with the chairperson of the TEAM and his/her designee prior to that date to discuss the reasons for the referral and the nature of the evaluation or reevaluation including the possibility of a home visit, if such visit is consented to by the parent;

317.2(d)(v) The right to have the evaluation or reevaluation completed, a TEAM meeting held, and two (2) copies of a proposed IEP or a written explanation Or a finding of no special needs and a thorough explanation of the results of the evaluation sent to the parent within forty-five (45) school working days of consent to the evaluation or reevaluation. This right includes the right to have the evaluation assessments completed within the first thirty (30) school working days of the forty-five (45) day period.

317.2(e) A full explanation of the procedural safeguards available to parents which shall include:

317.2(e)(i) The right to notice as set forth in §§317.1 and 317.2 (a), (b), (c), and (e) and which complies with §203.0.

317.2(e)(ii) A full explanation of those provisions in §208.0 and 209.0 pertaining to parental consent in the evaluation, program, and placement process.

317.2(e)(iii) The right to an independent evaluation as set forth in §328.0;

317.2(e)(iv) The right to due process and mediation, including the right to bring a civil action, in accordance with Chapter 4;

317.2(e)(v) The right to an educational advocate/surrogate parent pursuant to §§211.0 and 212.0;

317.2(e)(vi) The right to inspect and review the child's student record in accordance with the Massachusetts Student Record regulations within two (2) consecutive weekdays of request and to obtain copies of information contained in such record; provided however that summaries of evaluation assessments shall be completed no later than two (2) days before the TEAM meeting at which they will be discussed and shall be made available to parents upon request. The school committee may charge a reasonable copying fee, not to exceed the costs of reproduction, as long as the fee does not effectively prevent the parents from exercising their right to inspect and review the record. The school committee may not charge a fee to search for or retrieve information relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to him or her.

317.2(e)(vii) The definition of consent as set forth in §106.0.

317.2(e)(viii) The definition of "evaluation" as procedures used in accordance with §§320.0 and 322.0 to determine whether a child is in need of special education and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade or class.

317.2(f) A statement advising parents that they have the right to observe any programs proposed for their child if the child is identified as having special needs.

317.2(g) A statement of the parents' right to be present at and participate in all meetings of the TEAM where the IEP is being developed and written and to be accompanied and represented in such meeting(s) by person(s) of their choice; to have such meetings held at a time and place mutually

convenient to the parents and school committee; and of their child's right to be present and participate in all meetings in accordance with the provisions of ¶314.4;

317.2(h) A statement of the right to two (2) copies of the IEP within ten (10) school working days of the ten-month or annual review meeting; provided however, that where a referral for reevaluation is made, the parents shall have the right to a written summary of any review meeting at which such referral is made, sent within ten (10) school working days of such meeting;

317.2(i) A statement of the right to accept or reject the finding of no special needs or the proposed IEP in whole or in part, or to meet with school representatives to discuss the IEP during a thirty day period the last day of which period shall be specified in the notice, as provided in ¶¶325.0 and 326.0; and where applicable, the right to discuss proposed high school graduation and the anticipated termination of the child's special education services with school officials; the right to accept or reject that portion of the IEP which proposes graduation, and the right to request mediation or a hearing before the Bureau of Special Education Appeals on that issue;

317.2(j) A statement of the child's intended placement pending acceptance or appeal of the proposed IEP or finding of no special needs;

317.2(k) An explanation of the right of a child with special needs to be educated in the least restrictive environment as defined in ¶118.0;

317.2(l) A statement explaining that the parents of students with special needs have the right to waive basic skills testing; and,

317.2(m) A statement advising the parents that if their child is eighteen years of age or older, s/he will receive a copy of the notice.

318.0 Meeting between parents and TEAM chairperson prior to evaluation.

Each school committee shall ensure that the parents of each child referred for an evaluation or reevaluation, as well as the child who is at least fourteen, have an opportunity to meet with the chairperson of the TEAM, or the designee of the chairperson, prior to the date of the evaluation or reevaluation to discuss the reasons for the referral and the nature of the evaluation or reevaluation, including the possibility of a home visit, with parental consent.

319.0 Evaluation; Summaries of evaluation assessments; TEAM meeting; provision of IEP's or notice of finding of no special needs to parents.

Within forty-five (45) school working days after receipt of the parent's written consent to an initial evaluation or reevaluation, the school committee shall: provide an evaluation of the child who has been referred as set forth in ¶320.0; convene a TEAM meeting to review the evaluation data, determine whether the child requires special education and, if required, develop an IEP in accordance with ¶¶321.0 through 323.0; and provide the parents with two (2) copies of the proposed IEP or a written explanation of the finding of no special needs in accordance with ¶324.0. The evaluation assessments shall be completed within thirty (30) school working days after receipt of parental consent for evaluation. Summaries of such assessments shall be completed so as to ensure their availability to parents at least two (2) days prior to the TEAM meeting. If consent is received within thirty (30) to forty-five (45) school working days before the end of the school year, the school committee shall ensure that a TEAM meeting is scheduled so as to allow for the provision of a proposed IEP or notice

of finding of no special needs to parents no later than fourteen (14) days after the end of the school year.

320.0 Evaluation: Assessments.

320.1 The evaluation conducted pursuant to §319.0 shall be made by a multidisciplinary team and shall consist of assessments adapted to the age of the child being evaluated. For children being transitioned from early intervention programs, school committees are encouraged to use current and appropriate assessments from early intervention teams, whenever possible, to avoid duplicating testing. The school committee shall also ensure that the evaluation meets the following requirements:

320.1(a) Tests have been validated for the specific purpose for which they are used.

320.1(b) Tests are administered and interpreted by trained persons specifically qualified to administer and interpret them, and who do so in conformity with the instructions provided by their producers.

320.1(c) Testing procedures include tests and other evaluative materials tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

320.1(d) Tests and evaluative materials are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

320.1(e) Tests and evaluative materials are as free as possible from cultural and linguistic bias and have been separately evaluated with reference to the cultural and linguistic groups to which the child belongs.

320.1(f) Tests and other evaluative materials are provided in the child's native language or other mode of communication unless clearly not feasible to do so. In addition, if the primary language of the home is other than English, all screening and evaluation, including the conferences and meetings with the parents and child which are part of the screening and evaluation process, shall be conducted in such primary language. If a person fluent in the primary language of the home is unavailable, the school committee shall utilize the services of an interpreter oriented to the procedures and objectives involved in the particular part of the screening and evaluation process.

320.1(g) Whenever testing of the child is required or permitted by these regulations, the results of standardized or local tests of ability, aptitude, affect, achievement, aspiration or projective personality tests are not used exclusively or principally as the basis for any finding or conclusion.

320.1(h) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

320.1(i) The Department shall periodically review the test and testing procedures used by the various school committees to ensure conformity with the requirements of this paragraph.

320.2 The selection of assessments shall be made by the Administrator of Special Education subject to the following provisions:

320.2(a) The child shall be assessed in all areas related to the child's suspected need for special education and related services. Such assessments are referred to in these regulations as "specialist assessments." Each child shall also receive an educational status assessment and a teacher assessment as defined herein.

320.2(a) (i) Specialist Assessment(s): Assessments by one or more specialists in all areas related to the child's suspected need for special education and related services, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, communicative status and motor abilities. Each specialist conducting an assessment shall be trained in the area of suspected need, and shall give the child a professionally sound, complete, and suitably individualized examination or assessment, in the context of the child's physical, developmental, social, emotional, and educational history and current circumstances. Specialists assessments may include, but are not limited to, those assessments described in ¶320.2(b).

320.2(a)(ii) Educational Status Assessment: An assessment of the child's educational status by an administrative representative of the school department. Such assessment shall include a history of the child's education, an overview of the child's school progress, and a statement of the child's current standing.

320.2(a)(iii) Teacher Assessment: An assessment by a teacher who recently had or currently has the child in a classroom or other teaching situation. Such assessment shall include: an analysis of child's specific abilities along a developmental continuum, with a comparison of those abilities to the tasks which are contained in the regular education program; a statement of the child's academic functioning or achievement; and a statement of the child's behavioral adjustment attentional capacity, motor coordination, activity levels and patterns, communication skills, memory and social relations with groups, peers and adults.

320.2(b) Any or all of the following assessments shall also be performed if requested by the parent.

320.2(b)(i) Health Assessment: A comprehensive health assessment by a physician which identifies medical problems that may affect the child's education, such as physical constraints, chronic illness, neurological and sensory deficits, and developmental dysfunction, in addition to any procedures required by the regulations of the Department of Public Health. The health assessment shall be reviewed by the school nurse and any additional relevant health information shall be added from the child's school health records.

320.2(b)(ii) Psychological Assessment: An assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, based upon the child's developmental and social history; observation of the child in familiar surroundings (such as a classroom); sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to their maturity, integrity, and dynamic interaction within the educational context.

320.2(b)(iii) Home Assessment: An assessment by a nurse, psychologist, social worker, guidance or adjustment counselor, or teacher, of pertinent family history and home situation factors including, with prior written parental consent, a home visit. This assessment shall include a description of pertinent family history and individual developmental history and estimates of adaptive behavior at home, in the neighborhood and in local peer groups. Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation of the child or direct interview of the child in the neighborhood setting.

320.3 Written Documentation: Each person conducting an assessment in accordance with ¶320.1 and ¶320.2 shall summarize in writing the procedures employed, the results, and the diagnostic impression, and shall define in detail and in educationally relevant and common terms, the child's needs, offering explicit means of meeting them. Summaries of such assessments shall be made available to parents as provided in ¶319.0.

320.4 Waiver of Assessment: An individual assessment may be waived with the approval of the parent, if an equivalent assessment has been completed and if the person conducting the school assessment determines that the assessment results still accurately reflect the child's aptitude or achievement level or whatever other factors the assessment purports to measure. Such a waiver shall occur if the assessment is made available to the school and if the person who conducted the equivalent assessment (or the designee of such person) agrees to attend meetings of the TEAM. The attendance of such person shall be paid by the school committee if the school committee requests such attendance or by the parent if such attendance is requested by the parent and is not requested by the school committee.

321.0 TEAM Meeting: Notice to parent; determination of need for special education.

321.1 The Administrator of Special Education shall take steps to ensure that the parent is present at the TEAM meeting convened pursuant to ¶319.0 or is afforded the opportunity to participate, including: notifying the parent of the meeting in writing early enough to ensure that they will have an opportunity to attend; scheduling the meeting at a mutually agreed upon time and place; and making such efforts as are necessary and appropriate pursuant to ¶209.0. The notice of the TEAM meeting shall state the purpose, time and location of the meeting as well as who will be in attendance.

321.2 At the TEAM meeting, the TEAM shall review the evaluative data and determine whether the child requires special education. If it is determined that the child requires special education, the TEAM shall write an IEP at the meeting as prescribed in ¶322.0. If it is determined that the child does not require special education, the TEAM chairperson shall record the reasons for such finding, list the meeting participants, and send written notification pursuant to ¶324.0.

322.0 TEAM Meeting: Development of the IEP.

Upon determining that the child requires special education and based on the evaluative data, the TEAM shall write an IEP for the child and decide the child's placement. The IEP shall describe the special education and related services which the child requires and shall include the statements required by this provision as well as any other information which the Division shall require. Unless the child's IEP requires some other arrangement, the child shall be educated in the school which he or she would attend if the child did not require special education. If the parent and the other members of the TEAM are unable to agree on the IEP, the school committee representatives, through the TEAM chairperson, shall state the elements of the IEP proposed by the school committee. The IEP shall include:

- 322.1 The child's current performance level, i.e., what the child can do.
- 322.2 A specific statement of the measurable physical constraints on such performance, i.e., what the child cannot do.
- 322.3 A specific statement describing the child's learning style.
- 322.4 The general (1 year) educational objectives and the specific (quarterly) objectives which the child can reasonably be expected to achieve. Such objectives shall be measurable and shall be listed in order of priority.
- 322.5 The suggested methodology and teaching approach for meeting the general objectives.
- 322.6 The methods and criteria to be utilized in monitoring the child's progress toward achieving the objectives specified in the IEP and in evaluating the adequacy of the program.
- 322.7 A description of the child's participation in the regular education program including academic and non-academic areas; physical education, adapted as necessary; and extra-curricular activities.
- 322.8 The support service which shall be provided directly to the regular classroom teacher or to persons providing special education to the child, and the methods and types of personnel to be used to provide such support services.
- 322.9 A statement of physical education services for the child, adapted if necessary, in accordance with ¶502.12(d).
- 322.10 The criteria for the child's movement to a less restrictive environment.
- 322.11 A statement indicating why the student is or is not expected to meet the regular discipline code, and, if s/he cannot, what modifications of the code are required. If a modified code is required, the modifications shall be described in the IEP.
- 322.12 The types and amounts of related services (in terms of periods per day and per week) within ¶503.2 which are necessary to enable the child to benefit from special education and to achieve the objectives, and the duration and frequency of such services.
- 322.13 A statement of any parent-child instruction that is necessary to enable the child to achieve the objectives. Such statement shall specify the amounts and types of services which the parent is to be trained to provide to his/her child; the amounts and types of support services the parent will require in order to provide services to his/her child; and the types of personnel required to carry out such training and support.
- 322.14 The child's transportation needs in accordance with the provisions of Chapter 8.
- 322.15 Whether the particular related services provided to the child should be provided in a classroom setting, in a small group, or on an individual basis.
- 322.16 In accordance with the provisions of ¶507.0, the types of specialized materials and equipment necessary to enable the child to meet the objectives.
- 322.17 The daily duration of the child's program and the reasons why the child requires the stated duration.

322.18 The number of days per year on which the child's program should be provided, with justification if the number differs from the number of days in the regular school year. The number of days may be extended beyond the regular school year if the TEAM determines that the child will substantially regress without an extended special education program.

322.18(a) Extended year special education programs and related services shall be of the same type as those provided for the child in the regular school year, but may be in a different facility as long as the facility meets state and local fire and safety requirements and the staff providing special education programs and services under this paragraph meet the professional standards set out in 603 CMR 7.00, Certification of Education Personnel. Camping and recreational programs shall not be construed as extended year special education programs and related services under this paragraph.

322.19 The starting date for each service.

322.20 A statement of whether or not the child, if s/he is fourteen years or older, is expected to graduate from high school. If the child is fourteen years or older and if it is expected that the child will graduate, then steps should be taken to ensure that criteria are established for graduation and a plan for meeting such criteria is included in the child's IEP.

322.21 For students 16 years of age (and younger, if appropriate), a statement of the needed transition services as defined in ¶132.0. Such statement shall include any appropriate interagency responsibilities or linkages to be made before the student leaves the school setting.

322.21(a) When a child in need of special education approaches high school graduation or the age of twenty-two, whichever comes first, and may require continuing special services, the Administrator of Special Education, with the consent of the student over eighteen years of age, the parent or guardian, shall refer the child to an area office of a human service agency or the Bureau of Transitional Planning at the Executive Office of Health and Human Services pursuant to M.G.L. c. 71B, §12A-12C (Chapter 688 of the Acts of 1983). Such referral shall be made at least two years prior to the child anticipated graduation or twenty-second birthday. The liaison from the human service agency assigned by the Bureau of Transitional Planning shall participate in the development of the child's IEP under the auspices of the school committee.

322.22 Designation of the prototype through which the child's program is to be provided and the specific program within such prototype.

322.22(a) The decision regarding prototype and program shall be based on the IEP, including the types of related services which are to be provided to the child, the type of settings in which those services are to be provided, the types of service providers and the location at which the services are to be provided.

322.22(b) The prototype and program selected shall be the least restrictive environment consistent with ¶500.0. In selecting the least restrictive environment, consideration must be given to any potential harmful effect on the child or on the quality of services which s/he needs.

322.22(c) If a 502.4, 502.4(i), 502.5 or 502.6 prototype is designated, the TEAM shall state the basis for its conclusion that education of the child in a less restrictive environment with the use of supplementary aids and services could not be achieved satisfactorily (¶500.0).

322.22(d) The determination shall ensure that the child's placement is as close as possible to the child's home.

322.22(e) A home or hospital (502.7) prototype shall not be designated unless the child's physician has indicated the need for such program in accordance with ¶502.7.

322.22(f) A diagnostic evaluation (502.9) prototype shall not be designated as the child's prototype on an IEP.

322.22(g) The TEAM shall not recommend a specific program or related service unless it is assured that the adequacy of said program or related service has been evaluated and the program or related service can provide the elements required in the child's IEP.

322.22(h) The TEAM shall not recommend a day or residential school program outside of the city, town or school district in which the child resides unless there is no suitable program within the city, town or school district.

323.0 Special requirements applicable to certain situations.

The general requirements for IEPs as stated in ¶322.0 shall be modified for certain prototypes and programs as required below.

323.1 Where a child in need of special education requires a home or hospital program under the standards and procedures set out in ¶502.7, and has been referred for and received an evaluation, the TEAM shall write an IEP for the child as required in ¶¶319.0 and 322.0, except that the determination of the need for special education and the determination of prototype shall not be made.

323.2 Where the IEP requires placement in a day (prototype 502.5) or residential (prototype 502.6) school, the Administrator of Special Education shall consult with the personnel of the school contemplated to provide the program for the child, and shall state in the IEP that the school is able to provide the services. The director of the school shall also sign the child's IEP.

323.3 If a TEAM finds that the assessments which members make of a child are so inconclusive that the TEAM is unable to set objectives for the child to achieve, it shall recommend a diagnostic evaluation for the child under the standards and procedures set out in ¶502.9. No IEP shall be written for the child until the termination of the diagnostic evaluation. The Administrator of Special Education shall ensure that the TEAM recommendations for a diagnostic evaluation are implemented.

324.0 IEPs and notice of finding of no special needs to parents.

The school committee shall send the parents two (2) copies of the proposed IEP or a written explanation of the finding of no special needs, including a list of the meeting participants, along with a thorough explanation of the results of the evaluation and the notice required pursuant to ¶317.0.

325.0 Evaluation: IEP; options available to parents and school committees.

325.1 No later than thirty days after the school committee sends the parents the IEP or the statement that the child does not need special education and the notice required by ¶317.0, the parent of the child who has been evaluated or reevaluated shall exercise one of the following options by noting such option on one copy of the IEP or in a separate letter and returning it to the school committee.

325.1(a) To accept or reject the IEP in whole or in part or to accept or reject the finding that the child does not need special education.

325.1(b) To request a meeting with the Administrator of Special Education to discuss the rejected IEP or rejected portion of the IEP and placement pending appeal.

325.1(c) To accept an amended IEP that has been mutually agreed upon with the Administrator of Special Education and the TEAM in the process provided for under ¶326.0.

325.1(d) To postpone until the completion of the independent evaluation a decision on the IEP or on the finding that the child does not need special education, and to obtain an independent evaluation of their child (specifying whether at their own expense or by an independent evaluator at school committee expense), in accordance with ¶¶328.0 and 329.0. The right to obtain an independent evaluation at school committee expense shall apply only to those instances in which the parent disagrees with an evaluation or reevaluation obtained by a school committee and shall be limited to one independent evaluation per evaluation or reevaluation by the school committee.

325.1(e) To reject the IEP in whole or in part or the finding of no special needs and request an independent evaluation of their child (specifying whether at their own expense or by an independent evaluator at school committee expense) in accordance with ¶¶328.0 and 329.0. The right to obtain an independent evaluation at school committee expense shall apply only to those instances in which the parent disagrees with an evaluation or reevaluation obtain by a school committee and shall be limited to one independent evaluation per evaluation or reevaluation by the school committee.

325.2 The school committee shall immediately implement the mutually accepted elements of the IEP.

326.0 Meeting after completion of IEP.

Each school committee shall ensure that the parents of each child for whom an IEP has been written shall have an opportunity, within thirty days after it sends the written notice provided for in ¶317.0, to meet with the Administrator of Special Education, the TEAM chairperson or TEAM liaison, and through the TEAM chairperson any member of the TEAM to discuss the adequacy of the plan. All efforts shall be made in these discussions to resolve differences of opinion about the IEP and to agree on a suitable placement for the child.

327.0 Placement pending evaluation and administrative appeal.

Between the time that a child is referred for evaluation and the time that a placement for the child is consented to by the parent or ordered pursuant to these regulations, the child shall remain in his/her current educational placement, subject to the following:

327.1 A child who, at the time of referral for evaluation, was in the regular education program shall remain in that regular education program unless the school committee or the child's parents initiated a hearing before the Bureau of Special Education Appeals to show that remaining in such program endangers the health or safety of the child or substantially disrupts such program for other children. If such a showing is made, the Bureau shall approve an appropriate interim placement for the child within thirty (30) days of initiation of the hearing.

327.2 A child who, at the time of referral for reevaluation, was in a special education program paid for by the school committee, shall remain that special education program unless the child's parent

wishes the child to be in the regular education program. If the parent so elects, the child shall be placed in such regular education program unless the school committee determines that such placement would endanger the health and safety of such child, substantially disrupt the program for other children, or deny the child a free, appropriate public education. In such cases, the school committee shall request a hearing as provided in §402.0 to demonstrate the appropriateness of the special education program it proposes. During that proceeding, the child shall remain in his/her current special education program as provided in §405.0.

327.3 A child who, at the time of referral for evaluation, was not in an educational program approved by the school committee shall be placed in an appropriate program as determined by agreement between the school committee and the child's parents. When agreement cannot be reached, either party may request a hearing before the Bureau of Special Education Appeals which shall, within thirty (30) days of initiation of the hearing, select an appropriate interim program for the child; provided however that a special education program may be selected only if the child has previously been found to be a child in need of special education. This paragraph shall not apply to a child who is below the minimum age for regular school attendance, unless the child has been found to be a child in need of special education. Nothing in this paragraph shall be construed to limit the operation of §205.1.

328.0 Evaluation: Independent evaluation.

Where an independent evaluation is conducted pursuant to parental request, the following provisions shall apply.

328.1 If a parent disagrees with an initial evaluation or reevaluation completed by a school committee pursuant to these regulations, the parent shall have the right to obtain an independent evaluation at school committee expense that is equivalent to the types of assessments in the school committee's evaluation. The parent may obtain an independent evaluation consisting of less than all the assessments done in the school committee's evaluation if the parent is satisfied with any one or more of the assessments that were done. If the parent requests school committee funding for an independent evaluation consisting of assessments that are not equivalent to those in the school committee's evaluation, the provisions of §328.3 shall apply.

328.1(a) Any independent evaluation obtained pursuant to these regulations must be performed by an individual or group of individuals who are registered, certified, licensed or otherwise approved by the Commonwealth to perform the assessments and who abide by the rates set by the state agency responsible for setting rates for such services when paid with public funds. Unique circumstances of the child may justify an individual assessment rate that is higher than that normally allowed. If a parent obtains assessments for which no rate is established by the Commonwealth, the school committee may pay the fee charged or may initiate a hearing pursuant to §402.0 to show that the fee is unreasonably excessive and that it should not be required to pay the amount in question. All of the standards and requirements in these regulations that apply to initial evaluations shall also apply to independent evaluations, including the observation of the child in the current educational program.

328.1(b) The right to an independent evaluation at school committee expense shall continue for sixteen (16) months after the evaluation with which the parent disagrees. A school committee shall not be required to pay for an independent evaluation requested or obtained after that time.

328.1(c) The parent may obtain at private expense an independent evaluation which must be considered by the school committee in any decision concerning the provision of a free appropriate public education to the child.

328.2 The school committee shall respond, in writing, within five (5) school working days to a request by a parent to obtain an independent evaluation at school committee expense. If the parent requests an independent evaluation equivalent to the types of assessments in the school committee evaluation, the school committee shall enter into an agreement with the independent evaluator chosen by the parent. Such agreement shall relate to the conduct and cost of the independent evaluation, including the extent of the school committee's financial obligation for the cost of the independent evaluation as determined by the state agency responsible for setting rates for such services. The school committee shall pay the rate or the actual cost, whichever is lower, for the independent evaluation, including observation of the child in the current education program, if applicable. Whenever possible, the independent evaluation shall be completed and a written report sent under ¶328.4 no later than thirty (30) days after the date the parent requests the independent evaluation.

328.3 If the parent requests an independent evaluation at school committee expense which includes assessments not equivalent to the types of assessments in the school committee evaluation, the school committee must either:

328.3(a) Agree to pay for such assessments and enter into an agreement with an independent evaluator as provided in ¶328.2; or,

328.3(b) Initiate a hearing pursuant to ¶402.0 to show that the school committee evaluation assessed all areas of the child's suspected special needs and, as a result, the school committee should not be required to pay for assessments not equivalent to the types of assessments in the school committee evaluation.

328.4 When independent evaluation takes place at the expense of the school committee, the independent evaluator shall send a copy of the report of the independent evaluation to the parent and to the TEAM chairperson. In the case of an independent evaluation obtained at private expense, the parent may forward such results to the TEAM chairperson. Within ten (10) school working days from the time the TEAM chairperson receives the report of the independent evaluation, the Administrator of Special Education shall reconvene the TEAM to discuss the independent evaluation and to write a new or amended IEP if the TEAM determines it is necessary. Two (2) copies of any new or amended IEP shall be sent to the parent within ten (10) school working days. If the TEAM meeting is held within ten (10) school working days of the end of the school year, the school committee shall send the required IEPs within fourteen (14) calendar days.

328.5 If the parent obtains an independent evaluation without giving notice to the school committee and subsequently seeks payment from the school committee for the costs of such evaluation, the school committee shall determine, within a reasonable time of the request, whether the independent evaluation was: performed by an independent evaluator as defined in ¶113.0; meets the criteria of ¶320.1; and is equivalent to the types of assessments in the school committee's evaluation. If so, the school committee shall arrange to pay the costs of the independent evaluation within a reasonable time. If the school committee determines that the evaluation was not provided by an independent evaluator as defined in ¶113.0 or does not meet the criteria of ¶320.0 and that it should not be required to pay for the independent evaluation, the school committee shall initiate a hearing pursuant to ¶402.0 to show that it is not responsible for the costs of the evaluation. The school committee shall also have the right to refuse payment and to request a hearing pursuant to ¶402.9 to show that its evaluation assessed all areas of the child's suspected special needs and that it should not be required to pay for assessments not equivalent to the types of assessments included in the school committee evaluation. The school

committee shall not refuse to pay the costs of the independent evaluation for the sole reason that notice was not provided to the school committee before the parents arranged to obtain the evaluation.

329.0 Independent evaluation: Acceptance or rejection of IEP.

No later than thirty (30) days after the date of the meeting of the reconvened TEAM referred to in ¶328.4, the parent shall accept or reject the new, modified, or original IEP and so notify the school committee pursuant to ¶325.1.

330.0 Evaluation: Immediate placement upon parental consent; distribution of IEP; further appeal.

330.1 Where the IEP of the child in need of special education has been accepted in whole or in part by that child's parent, the child shall be placed immediately in the mutually accepted program.

330.2 The Administrator of Special Education shall send a copy of the IEP to each person directly responsible for the objectives specified in the IEP, provided that the IEP shall not be sent to personnel other than school committee employees unless the parent consents.

330.3 Where the parent has decided to reject the IEP in whole or in part, the provisions of Chapter 4 shall be applicable. However, the school committee shall implement immediately that part of the IEP accepted by the parent.

331.0 Evaluation: Emergency evaluation and placement.

An emergency placement can be made on the basis of an emergency evaluation. An emergency evaluation must include one or more assessments as described in ¶¶320.2(a)(i) through 320.1(a)(iii). Such placement can be made where a child demonstrates repeated instances of dangerously assaultive or self-abusive behavior and shall be provided in the following manner.

331.1 The child shall be referred immediately by the Administrator of Special Education for an emergency evaluation which shall, with parental consent and notice as provided in ¶317.0, be convened the same day. The TEAM shall recommend no later than the following day a temporary placement for such child, for a period not to exceed fifteen (15) days. The school committee shall provide or arrange for the provision of such temporary placement, upon the written consent of the parent.

331.2 The parent shall be informed immediately of the child's behavior and shall participate, if possible within the constraints of time, in the placement decision. No special education placement shall be made under this paragraph without the prior written consent of the child's parent.

331.3 No later than fifteen (15) days after the decision of the emergency evaluation, a TEAM evaluation of the child shall be completed which includes all appropriate assessments. All of the provisions of these regulations relating to evaluations shall apply, except that which establishes a thirty-day time limit for completion of such evaluations.

332.0 Evaluation: Placement upon new residence.

332.1 Where a child or a child's family has moved from another city or town in the Commonwealth or from outside the Commonwealth and such child was in a special education program provided by the school committee of the former community of residence, the Administrator of Special Education, upon agreement with the parents, shall see to it that the child's IEP from the former community of residence is implemented immediately in a comparable placement.

332.2 The IEP written for the child by the school committee of the former community of residence and accepted by the parent remains in effect until, with the consent of the parent, the school committee of the new community of residence completes a new evaluation and a new IEP is written and accepted by the parent.

332.3 The school committee of the new community of residence shall assume financial responsibility for the child's special education program as of the actual date of the child or the child's family's new residence except as provided herein. If the school committee of the child's or the child's family's former community of residence has provided or arranged for the provision of special education to the child in a residential (502.6) or day (502.5) placement and the child or child's family moves to a different school district on or after July 1 of the fiscal year, the school committee of the former community of residence shall pay the approved budgeted costs, including necessary transportation costs, of such residential or day placement for the balance of the fiscal year (in accordance with section 5 of M.G.L. c.71B). The school committee of the new community of residence shall notify the former community of residence of any review, monitoring, and reevaluation and provide an opportunity to participate during the period when the financial obligation of the former community of residence continues under this provision.

332.4 Notwithstanding the preceding provisions of this paragraph, no school committee shall pay for a child's special education program in a private school that is not approved by the Division. If a school committee outside of the state placed a child in such an unapproved private school, the school committee of the child's family's new residence shall immediately place the child in a comparable approved private program (in accordance with §504.0) or public school program, with the consent of the parent, until a new IEP is written and accepted in accordance with §332.2.

333.0 Review of the child's progress: Ten-month and annual review.

Each school committee shall provide for a review of the progress of each child who has been placed in a special education program. Such review of each child's progress shall be conducted within ten months after the initial placement of the child, and thereafter periodically but not less than annually, on or before the anniversary date of implementation of the IEP. Whenever possible, the review shall be scheduled near the time that there may be a change in the personnel providing the major services to the child under the IEP, as when the child is to move from one grade or school to another. The review shall be conducted as follows; provided however that the duties of the Administrator of Special Education may be performed by his/her designee:

333.1 The Administrator of Special Education, the parents, and the person(s) providing the major services to the child under the IEP shall meet and make a careful review of the child's progress based upon the progress reports submitted by the TEAM liaison under §335.1 and the observations of those working with the child. The Administrator of Special Education or the parents may at their discretion invite other persons who have worked with or will be working with the child to attend the review meeting. If there is a possibility that the child may be placed in a new program, the teacher, if known, or a representative of the program shall be invited to participate in the meeting.

333.2 At least ten days prior to the review meeting, the Administrator of Special Education shall invite, in writing, the child's parents, and where appropriate, the child, to attend and participate in the review meeting. The notice shall inform the parents, and where appropriate, the child, of the purpose of the meeting; who will be in attendance; the parents' right to invite others who have worked or will work with the child to attend the meeting; and the time and location of the meeting. The time and location of the meeting shall be mutually agreeable.

333.3 The participants in the review meeting shall state the child's current performance level and whether the child has achieved the goals set forth in the IEP and shall determine:

333.3(a) Whether the child can be educated in a less restrictive environment and what adaptations or modifications are necessary in that environment to meet the child's needs.

333.3(b) Whether the current program the child is in should be specifically modified to make it more suitable to the child's needs.

333.3(c) Whether it is appropriate to refer the child for reevaluation. If the child is referred for reevaluation, a written summary of the review meeting shall be sent to the parent within ten school working days after the review meeting along with the notice of rights described in ¶317.0.

333.4 If, as a result of the review meeting, the child is referred for a reevaluation, such reevaluation shall proceed and a TEAM meeting held as provided in ¶¶334.0 and 319.0.

333.5 If the participants at the review meeting decide not to refer the child for reevaluation, they shall write a new or amended IEP for the child.

333.5(a) A new IEP shall be written for any child for whom a more or less restrictive environment is recommended.

333.5(b) If an amended IEP is written, the amendment shall:

333.5(b)(i) Be based on a review of the child's progress;

333.5(b)(ii) Incorporate the determinations made in ¶333.3;

333.5(b)(iii) State that the program the child is in: be continued in a form substantially similar to its current form, with modification to reflect the child's progress during the previous year; be continued in a form substantially different from its current form; or be terminated and the child placed in a new program;

333.5(b)(iv) Specify the service provision elements and specific goal modification;

333.5(b)(v) Be signed by the parent indicating approval of the amended IEP.

333.6 Two (2) copies of the new or amended IEP shall be sent to the parents of the child within ten (10) school working days of the review meeting, along with the notice required pursuant to ¶317.0. If the review meeting is held within ten (10) school working days before the end of the school year, the school committee shall send the new or amended IEP and notice within fourteen (14) days and shall take the necessary steps to ensure that there is an accepted IEP and appropriate placement by the beginning of the new school year.

333.7 Whenever a new or amended IEP is written under this paragraph for a child who was placed in a day or residential school program under ¶¶502.5 or 502.6, and the Division has had or will have any financial responsibility for such placement, and the IEP changes the child's placement, the Administrator of Special Education shall send a copy of the new or amended IEP to the Division.

333.8 Any new or amended IEP written pursuant to this paragraph or ¶334.0 shall conform to all the requirements of an original IEP. The rights of the parent with respect to the new or amended IEP shall

be the same as those that apply to the original IEP except with respect to parental consent in which case the provisions of §§208.2 - 208.3 shall apply.

334.0 Evaluation of the child.

Each school committee shall provide a reevaluation for each child in need of special education every three years, or more frequently if requested by the child's parent or teacher, or if recommended by a participant in a review meeting under §333.0 who comes within the categories listed in §311.0.

334.1 The school committee shall obtain written parental consent before initiating a reevaluation. In requesting such consent, the school committee shall provide the parents written notice that complies with §317.0. The reevaluation shall be completed and a TEAM meeting held within the timeframes set forth in §319.0. If the parent refuses consent to the reevaluation, the provisions of §208.3 shall apply.

335.0 TEAM Liaison: Designation; duties.

For each child in need of special education, the TEAM shall arrange to have one person designated as a liaison with the TEAM. Such person shall be selected from among the persons providing the services under the child's IEP and shall, where possible, be a person who is a member of the TEAM that evaluated the child. Such person shall:

335.1 Monitor the child's progress toward reaching the goals set in the IEP, and submit written reports on such progress, at least semiannually, to the child's parents, to the TEAM, chairperson, and to the administrator of the school or facility in which the child's program is provided. Reports of the child's progress provided to the parents shall state the goals set by the TEAM for the child and the time set for the child to achieve those goals and specifically describe in measurable terms the progress the child has made toward achieving such goals. All children in special education programs are entitled to receive the same number of report cards or their equivalent as do children in the regular education program; provided, however, that children placed out-of-district receive reports at least quarterly.

335.2 Recommend to the TEAM chairperson at any time after implementation of the child's IEP, any modification of the IEP (other than a change of prototype) that should be made pending the required ten-month or annual review. Upon approval by the Administrator of Special Education, and the TEAM chairperson, and with written notice to and consent of the child's parent, the Administrator and chairperson shall modify the IEP.

335.3 Recommend to the Administrator of Special Education at any time after implementation of the child's IEP, any unscheduled reevaluation of the child that should take place pending the ten-month or annual review. Upon approval by the Administrator, and with written notice to and consent of the child's parents, the Administrator shall arrange for the reevaluation.

335.4 In the case where an IEP has included needed transition services (§322.18) and a participating agency, other than the school committee, fails to provide agreed upon services, the TEAM liaison shall advise the Administrator of Special Education of the need to reconvene the TEAM to identify alternative strategies to meet the transition objectives.

336.0 Further opportunity to meet.

336.1 Parents of a child with special needs shall have the opportunity to meet, at least semi-annually, with the teaching staff involved in implementing their child's IEP. The time, date and place of such conference shall be arranged to be mutually convenient.

336.2 Any parent who is not satisfied with the progress of the child or with the child's program, shall have the right to meet with the person in charge of the school or institution that is providing such child's program and the Administrator of Special Education of the school district within whose jurisdiction such child resides, no later than five days after requesting such meeting.

337.0 Applicability of these regulations to vocational technical schools.

337.1 As provided in ¶202.0, the requirements of these regulations shall apply to children who are enrolled in a regional vocational technical school district or an independent vocational school district, and the governing body for such school district shall be responsible for fulfilling those requirements, in accordance with the following:

337.1(a) If a child is enrolled in a regional vocational technical school district or an independent vocational school district and entered the school without an IEP under these regulations, the governing body of the regional vocational technical school district shall be responsible for providing the child with an evaluation if one is requested under ¶311.0, and any special education and related services under ¶¶502.0 and 503.0 and Chapter 8 of these regulations that are recommended in the IEP and consented to by the child's parent or ordered pursuant to these regulations.

337.1(b) If a child is enrolled in a regional vocational technical school district or an independent vocational school district and entered the school with an IEP developed by the local school committee, the governing body of the regional vocational technical school district shall be responsible for any modifications to the child's IEP and for any evaluations, placements, and services specified in ¶317.1 (a), except day or residential school placements under ¶¶502.4 (i), 502.5, or 502.6. If such a child develops special needs that require a ¶502.4(i) or a day or residential school placement, the local school committee that developed the IEP with which the student entered the vocational school, shall be responsible for providing the ¶502.4(i) or day or residential placement under ¶¶502.5 or 502.6 that is recommended in an IEP and consented to by the child's parent or ordered pursuant to these regulations. The Administrator of Special Education for the regional vocational technical school shall notify and request the participation of appropriate personnel from the child's local school district whenever such a child requires a reevaluation that may result in the recommendation of a ¶502.4(i), day, or residential school placement.

337.1(c) Nothing in this regulation shall prohibit the member towns of the regional vocational technical school district from specifying in the regional district agreement any reasonable way of allocating the financial and programmatic responsibilities under these regulations; provided, however, that if the regional district agreement or these regulations require the local school committee to provide any special education placements of services to a child enrolled in a regional vocational technical school shall notify the appropriate personnel from the child's local school district and invite them to participate in the evaluation of the child and development of child's IEP.

337.2 Whenever it has been determined that a child in need of special education may be placed in a vocational program not previously attended by such child, the vocational program or regional vocational technical school shall provide a representative to participate on the TEAM.

337.3 A TEAM may use the diagnostic evaluation procedures of ¶502.9 to provide for further evaluation of a child in need of special education in a vocational technical program.

337.4 The governing body of each regional vocational technical school district or independent vocational school district shall be responsible for developing programs for special education students in prototypes §§502.1 through 502.4, and shall provide assistance to the school committees within its region with long range program planning for children in need of special education who will require vocational education services later in their school careers.

338.0 Disciplining students with special needs: Procedures applicable when suspension(s) will accumulate to more than ten days in the school year.

The following provisions shall apply whenever a school committee or educational collaborative proposes to suspend a student with special needs for more than ten cumulative days in a school year. Whenever the term "school" is used in §338.0, it shall include "educational collaborative."

338.1 Definition of Suspension: Suspension shall be defined as any action which results in the removal of a student from the program prescribed in his/her IEP. The term includes in-school suspension as well as any exclusion from transportation services which prohibits the student's participation in his/her prescribed program.

338.2 General Requirements: Each school committee and educational collaborative shall ensure that:

338.2(a) Its Code of Conduct is on file with the Department of Education and the Code of all student handbooks contain the specific procedures in these regulations for the suspension of a student with special needs;

338.2(b) It has an appropriate procedure to notify the Administrator of Special Education or designee of the misconduct for which suspension of a student with special needs for more than ten (10) cumulative days is proposed so that the procedures required by these regulations can be implemented consistently;

338.2(c) The number and duration of suspensions of students with special needs is recorded and maintained by school officials;

338.2(d) The IEP of every student with special needs indicates why the student is or is not expected to meet the regular discipline code, and if not, what modification of the code is required. If a modified discipline code is required, such modifications shall be described in the IEP; and

338.2(e) No student with special needs is suspended for more than ten (10) cumulative days in the school year except as provided in §§338.5 - 338.7.

338.3 Meeting to review IEP and student's special needs: When it is known that the suspension(s) of a student with special needs will accumulate to ten days in a school year, a review of the IEP will be conducted as provided in §333.0. Participants in the meeting shall include, but not be limited to, individuals who are trained in the area of the student's special needs. At that review, the review TEAM will determine whether the student's misconduct is related to the student's special needs, or results from an inappropriate special education program/placement or an IEP that was not fully implemented. Depending on the result of that determination, suspension may or may not be implemented as provided in §§338.4 and 338.5. If the student has demonstrated repeated instances of dangerously assaultive or self-abusive behavior, an emergency evaluation and placement may be made with parental consent pursuant to §331.0.

338.4 Circumstances under which the student may not be suspended for more than ten cumulative days:

338.4(a) If the TEAM concludes that the student's misconduct is related to the student's special needs or results from an inappropriate special education program or placement or an IEP that was not fully implemented, the student shall not be suspended. Instead, the student's IEP shall be revised to reflect a new program or placement designed to meet the student's needs more effectively, or, if the misconduct resulted from an appropriate IEP that was not fully implemented all necessary steps shall be taken by the school to ensure that the IEP is fully implemented. If revision of the student's IEP is required, the provisions of these regulations pertaining to development of the amended or new IEP shall apply.

338.4(b) If a new program or placement is designed for the student as a result of the review, the new program or placement shall be implemented immediately following parental approval of the IEP. If the parent refuses consent to the IEP, the school committee or parent may request a hearing to determine the appropriateness of the program pursuant to ¶401.0. Alternatively, the parties may seek mediation to resolve the dispute. If a hearing is requested, during the pendency of the hearing, the student shall remain in the last agreed upon educational placement (the placement in effect when the dispute arose), unless another placement is agreed to by the school committee and the student's parent, or a court order permits the school committee to change the student's placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others. If a court order is sought, the provisions of ¶338.6 shall apply.

338.5 Circumstances under which suspension may be imposed for more than ten (10) cumulative days:

338.5(a) If the school wishes to impose a suspension which will result in more than ten (10) cumulative days of suspension in the school year, and the TEAM concludes that: the student's misconduct is not related to the student's special needs; is not the result of an inappropriate special education program/placement; and the current IEP was fully implemented, the school shall:

338.5(a)(i) Provide an alternative plan for the delivery of special education services to the student during the period of suspension, which shall be referred to as "the alternative plan;"

338.5(a)(ii) Secure the approval of the alternative plan by the Division of Special Education as provided in ¶338.6 below; and

338.5(a)(iii) Before the student is suspended for more than ten (10) cumulative days, present the alternative plan to the student's parent along with the written notice required by ¶317.0. The failure or refusal of the parent to consent to the provision of services under the alternative plan shall not prevent implementation of the suspension. However if the parent requests a hearing pursuant to ¶402.0, the provisions of ¶338.5(b) shall apply.

338.5(b) If the parent requests a hearing pursuant to ¶402.0, the student shall continue in the last agreed upon educational placement (the placement in effect when the dispute arose) pending the hearing unless another placement is agreed to by the parties, or a court order permits the school committee to change the student's placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student

or to others. If a court order is sought, the provisions of ¶338.7 shall apply.

338.6 Notice to and Approval by the Division of Special Education.

338.6(a) Whenever a proposed suspension will result in exclusion of a student with special needs from school for more than ten (10) cumulative days in the school year, the school shall immediately send written notice of the proposed suspension and request for approval of the alternative plan to the Division of Special Education, with a copy to the student's parent or guardian.

338.6(b) A copy of the alternative plan must be included in the written documentation and the request for approval shall demonstrate that:

338.6(b)(i) The school has complied with procedures required by Goss v. Lopez and by the school's Code of Conduct;

338.6(b)(ii) The school has considered less restrictive disciplinary measures, including modifying the student's IEP to set out specific methods of discipline;

338.6(b)(iii) The disciplinary action is for a stated and limited number of days;

338.6(b)(iv) The action is necessary in light of the needs of the student and other students in the school;

338.6(b)(v) The school administrators have conferred with appropriate special education staff as to the disciplinary action and have followed all the procedures outlined in this paragraph, including notice to the parent or guardian of the right of appeal under ¶402.0.

338.6(c) The Division of Special Education will review all the information presented by the school officials and approve or reject the alternative plan within five (5) days of receipt.

338.6(d) If the Division of Special Education approves the alternative plan and the parent requests a hearing, the student shall remain in the last agreed upon educational placement (the placement in effect when the dispute arose) pending the hearing unless another placement is agreed to by the parties, or a court permits the school committee to change the student's placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others. If a court order is sought, the provisions of ¶338.7 shall apply.

338.7 Court order necessary to authorize suspension: A school committee shall not suspend or exclude a student for more than ten (10) cumulative days during the pendency of a Bureau of Special Education Appeals hearing or judicial proceeding brought to challenge a suspension, proposed suspension, or any determination under this paragraph unless the school committee obtains a court order authorizing a temporary change of the child's educational placement based on a showing that the student's continued presence in school presents a substantial likelihood of injury to the student or to others.

Chapter 4 - Appeal Procedures

400.0 Bureau of Special Education Appeals: Disputes over provision of special education; notice to Bureau.

In order to provide for resolution of differences of opinion regarding the identification, evaluation, placement, proposed educational placement, or the provision of a free appropriate public education to special needs children, the Bureau of Special Education Appeals (the Bureau) of the Department of Education shall conduct mediations and hearings to resolve such disputes at the request of parents and school committees.

Hearings and mediations shall be conducted by impartial hearing officers and mediators employed by the Department of Education solely to conduct those proceedings. Bureau mediators and hearing officers shall not be individuals involved in the care or education of the children who are the subject of the Bureau hearings or mediations, and shall not have personal or professional interests which would conflict with their objectivity in the hearing or mediation.

400.1 No later than five (5) days after receipt of a request for a hearing or notice that an IEP or finding of no special needs has been rejected by the parent, the school committee shall send a copy of such notice to the Bureau. The Bureau shall then give notice in writing to the parties of the rights of the parents and school committee to request a hearing and explaining the availability of mediation as a voluntary dispute resolution procedure. The Bureau must also send to the parents a list of free or low cost attorneys and advocates available to assist parents with special education hearings.

401.0 Bureau of Special Education Appeals: Mediation procedures.

Parents and school committees may voluntarily agree to seek resolution of their dispute through mediation. Within thirty (30) days of receipt of a request for mediation, the mediator will schedule a mediation session at a time and place convenient to the parties. The mediation shall include the parents and any representative of the parents' choosing and representative of the school committee, with one representative who is authorized to resolve the dispute on behalf of the school committee. The Bureau mediator will assist the parties in working toward an agreement, clarifying the matters in dispute, and understanding their respective rights and obligations under these regulations. When the parties reach agreement, it will be set forth in a written mediation agreement. If no agreement is reached, the parents or school committee may request a hearing.

All discussions which occur during mediation are confidential and may not be used as evidence in a hearing. Parents and school committees may request a hearing without participating in mediation.

402.0 Appeal to the Bureau of Special Education Appeals: Request for hearing; rights of parents and schools; notice to parties.

A parent or a school committee may request a hearing at any time by sending a written request to the Bureau. A parent or school committee, except as provided in ¶402.1, may initiate a hearing on any matter concerning the identification, evaluation, placement, proposed IEP, portion of the proposed IEP, manner of implementation of an accepted IEP, provision of a free appropriate public education, or procedural protections of state and federal law. A parent of a handicapped student may request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973, as set forth in 34 CFR 104.31-104.39.

A parent, however, need not request a hearing to resolve issues of non-compliance, but may report such issues of non-compliance to the Department of Education, using the compliant management

procedures under ¶215.0 of these regulations. Use of the Department's complaint management procedures does not prevent a parent from requesting a mediation or a hearing on those issues.

402.1 A school committee may not request a hearing on a parent's failure to consent to initial evaluation or initial placement of a child in a special education program. The school committee's right to request a hearing on matters relating to independent evaluations is limited to the circumstances described in ¶¶328.3 and 328.5.

402.2 The hearing request shall include the name and address of the child, the child's parent, guardian, or educational advocate, the school committee, and advocates or legal representative, if any. The request shall be dated, and signed by the requesting party, and shall contain a brief statement describing the disputed matter for which a hearing is being sought.

402.3 No later than five (5) days after receipt of a request for a hearing, the Bureau shall schedule the hearing to be held within twenty (20) days after the receipt of the hearing request, and shall assign a hearing officer to conduct the hearing. The Bureau shall notify the parties in writing of the date of the hearing and of the hearing officer assigned to hear the appeal. The hearing shall be held at the Department of Education or other location accessible to the parties, at a time determined by the hearing officer to be mutually convenient.

402.4 In addition to the notice described in ¶400.1, upon receipt of a hearing request the Bureau shall send to the parties a notice describing the rights and obligations of the parties, as set forth in ¶403.0 of these regulations. The Bureau shall also send to the parents a list of free or low cost attorneys and advocates available to assist parents in connection with special education hearings.

403.0 Bureau of Special Education Appeals: Hearings; rights and obligations of the parties.

Hearings before the Bureau pursuant to the IDEA, M.G.L. c.71B, and or Section 504 of the Rehabilitation Act of 1973, shall be governed by these regulations, the regulations under the IDEA, as set forth in 34 CFR 300.1 et seq M.G.L. c.30A, as set forth in 801 CMR 1.00 et seq.

403.1 The following rights are accorded to the parties under the provisions governing Bureau proceedings:

403.1(a) The right to be accompanied and advised by advocates, counsel, and individuals with special knowledge or training with respect to the issues of children with special needs.

403.1(b) The right to present evidence, to confront, cross-examine, and, pursuant to a subpoena issued by the Bureau, to compel the attendance of witnesses.

403.1(c) The right to prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) days before the hearing.

403.1(d) The right to obtain an electronic verbatim record of the hearing upon written request to the Bureau after the close of the hearing. The record may only be used in a manner consistent with these regulations and otherwise shall be kept confidential except with the consent of the parent.

403.1(e) The right to receive a written decision setting forth the hearing officer's findings of fact and order, within forty-five (45) days of the receipt of a request for a hearing, provided that the hearing officer may grant specific extensions of time at the request of either party.

403.1(f) The right to receive, upon request to the Bureau, a list of its impartial hearing officers with their qualifications.

403.2 The following rights are accorded to parents under the provisions governing Bureau proceedings:

403.2(a) The right to have the child who is the subject of the hearing present at the hearing.

403.2(b) The right to open the hearing to the public, otherwise the hearing shall not be open to the public.

403.2(c) The right, pursuant to the Massachusetts Student Records Regulations, to inspect and to receive a copy of all student records pertaining to the child, including, but not limited to, the written record and clinical history of the evaluation, and any other school records and papers related to the identification, evaluation, placement or provision of a free appropriate public education to the child.

403.2(d) The right to introduce an independent evaluation as evidence in the hearing, whether the independent evaluation was conducted at parental or school committee expense.

403.2(e) The right to receive reasonable attorney's fees, if the parents prevail in the proceedings.

404.0 Bureau of Special Education Appeals: Hearing officers' powers and duties.

The Bureau hearing officer shall have the power and the duty to conduct a fair hearing; to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; to reach a fair, independent, and impartial decision based in the issues and evidence presented at the hearing and in accordance with applicable law.

404.1 In furtherance of these duties the hearing officer has the power to:

404.1(a) Administer the oath of affirmation to anyone who will testify at the hearing;

404.1(b) Assist all those present in making a full and free statement of the facts;

404.1(c) Ensure that all parties have a full opportunity to present all their claims orally, or in writing, and to secure witnesses and evidence through issuance of subpoenas to establish their claims;

404.1(d) Receive, rule on, exclude or limit evidence;

404.1(e) Schedule a mutually convenient date, time, and place for the hearing consistent with the rights of the parties under these regulations;

404.1(f) Rule on requests or motions that may be made during the course of the hearing;

404.1(g) Hold prehearing conferences for the purpose of clarifying the matters in dispute or resolving the dispute without the necessity of a hearing;

404.1(h) Upon agreement of the parties, decide the matter in dispute without hearing upon submission of written documents;

404.1(i) Order additional evaluations by the school committee or independent evaluation at public expense when necessary in order to determine the appropriate special education for the child;

404.1(j) Order written submissions by the parties;

404.1(k) Reconvene the hearing at any time prior to issuance of the decision;

404.1(l) Dismiss a hearing request when the requesting party fails to proceed to hearing within one year from the date of receipt of the hearing request;

404.1(m) Take such other steps as are appropriate to assure the orderly presentation of evidence and protection of the rights of the parties of the hearing.

404.2 The hearing officer shall have the authority to order such relief as s/he deems appropriate and consistent with Chapter 766 and the IDEA, including ordering the placement or services recommended by the school committee, the placement or services requested by the parent, either of those placements or services with modifications, or such alternative programs or services as may be required to assure the provision of a free appropriate public education to the child in the least restrictive environment.

404.3 When a hearing officer rules that a child with special needs should have received a program or service(s) which a school committee did not provide, the hearing officer may order the school committee to pay the full cost of the program or service(s) actually rendered, including, when necessary, reimbursement to the parent of such costs. Such reimbursement shall only be retroactive to the date the parents gave notice to the school committee by disputing or rejecting an inappropriate IEP, or other similar means, that the program or services offered were inappropriate, or to the date that the program or services could reasonably have been expected.

404.4 When a hearing officer has determined that a day school (502.5) or residential school (502.6) program is required for a special needs child, s/he shall specify a day or residential school program which is approved under the Regulations for the Approval of Special Education Schools to Serve Publicly Funded Students (603 CMR 18.00), unless a waiver of those provisions is essential in order to assure the provision of a free appropriate public education for the child.

404.5 The school committee shall implement the program ordered by the hearing officer. The TEAM which completed the school evaluation shall write the IEP incorporating the decision of the hearing officer.

405.0 Bureau of Special Education Appeals: Placement of the child during proceedings; on appeal.

The status of the child during the time there is a hearing before the Bureau or the Bureau's decision is on appeal to court shall be as follows:

405.1 Unless the parents and the school committee agree otherwise, during the pendency of proceedings before the Bureau, the child shall remain in his/her then current education placement, except if the child's parents are seeking initial placement in the public school, in which case the child shall be placed in the public school program. Where the parents are disputing a portion of the educational program or services offered by the school committee, those portions of the program or services not in dispute shall be implemented by the school committee pending the resolution of the

proceedings.

405.2 Unless the parents and the school committee agree otherwise, during the pendency of any judicial appeal of the Bureau decision, the child shall remain in the then current educational placement, unless the child's parents are seeking initial placement in the public school, in which case the child shall be placed in the public school program. Where the Bureau has ordered the school committee to place the child in a new placement, and the parents agree with the order, the school committee shall immediately implement the placement order by the Bureau. The parents have the right to reject the decision of the bureau hearing officer and to request placement of their child in the regular public school program. If such placement is requested, the school committee shall provide the child with the regular education program, unless the school committee determines that such placement would endanger the health and safety of such child, substantially disrupt the program for other children, or deny the child a free appropriate public education, in which case the school committee shall seek enforcement of the Bureau decision in state or federal court. The court shall have the authority upon such showing to order the child placed in an appropriate educational placement.

405.3 Except as provided in §§405.1 and 405.2, any party seeking to change the child's placement during the pendency of proceedings before the Bureau or in subsequent judicial proceedings shall seek a preliminary injunction from a state or federal court of competent jurisdiction, ordering such a change in placement.

406.0 Bureau of Special Education Appeals: Notice of decision; appeal.

The written findings of fact and decision of the hearing officer along with notification of the procedures to be followed with respect to appeal and enforcement of the decision shall be sent to the parents and their representatives, if any; to the representative of the child, if the child has had representation separate from the parents; and to the school committee and its legal representative, if any.

406.1 A copy of the Bureau decision with the child's and parent's name deleted shall be sent to the State Advisory Commission for Special Education.

406.2 The decision of the Bureau is final and is not subject to further agency review. Any party aggrieved by the Bureau decision may file a complaint in the Superior Court of competent jurisdiction or in federal district Court for review of the Bureau decision. Where such review is sought under the provisions of M.G.L. c.30A, §14(1), the complaint shall be filed within thirty (30) days of receipt of the final decision.

406.3 Except as provided in §405.0, the final decision of the Bureau shall be implemented immediately. Under M.G.L. c.30A, §14(3), appeal of the decision does not stay its effect. Rather, a party seeking to stay the decision of the Bureau shall seek a stay from the court having jurisdiction over the party's appeal.

407.0 Bureau of Special Education Appeals Decision: Compliance/enforcement.

A party contending that a decision of the Bureau is not being implemented may file a complaint with the Department of Education, whose responsibility it shall be to investigate such complaint. In addition, a party may file a motion with the Bureau contending that the decision of the Bureau is not being implemented and setting out the areas of alleged non-compliance. The hearing officer may convene a hearing at which the scope of the inquiry will be limited to the facts being on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the hearing officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Education for appropriate enforcement action.

Chapter 5 - Program

500.0 Special education which each school committee is required to provide.

Each school committee shall provide or arrange for the provision of each of the elements of the IEPs of children in need of special education, in accordance with the applicable provision of these regulations, and shall take all steps necessary to insure compliance with all elements of the IEPs of children in need of special education. Each school committee shall ensure that children in need of special education receive a free appropriate public education in the least restrictive environment. Children with special needs shall be placed outside the regular educational environment only when the nature or severity of their special need is such that education in a less restrictive educational environment with the use of supplementary aids and services cannot be achieved satisfactorily. Each school committee shall ensure that a continuum of alternative placements is available to meet the needs of children with special needs for special education and related services.

501.0 Three year program plan for special education.

Each school committee shall submit for approval to the Division, by a date and in a form designated by the Division, a three year program plan and annual update describing the specific manner in which the school committee will provide special education in accordance with these regulations. The plan must be submitted every three years (§§501.1 and 501.2), with certain elements reported annually as described in §501.3. In addition, if changes are proposed to the program plan as approved by the Division, such proposed changes must be submitted for approval with the annual update.

The school committee shall provide to the Department on an annual basis a separate assurance of compliance with 34 CFR §§300.229, 300.230, 300.231 and 300.238 pertaining to excess costs, nonsupplanting, comparable services and procedural safeguards.

501.1 Three Year Program Plan: The plan shall describe the specific manner in which the school committee will provide special education for the subsequent three school years and shall include the elements specified in §501.2.

501.1(a) In developing the program plan, the school committee shall provide for participation from the school committee's Parent Advisory Council in accordance with §601.3.

501.1(b) If the program plan fails to comply with the requirements of these regulations, the Division shall give the school committee timely notice of the decision and an opportunity for a hearing to contest the decision. If after such notice and hearing the Division finds that the plan does not comply with said requirements, the Department may make no further payments to the school committee until satisfied that there is compliance with the regulations, and shall take any other action it deems reasonable under the circumstances.

501.2 Contents of Three Year Program Plan: Each three year plan shall include:

501.2(a) Procedures which ensure that all children within the jurisdiction of the school committee who have special needs, regardless of the severity of their special needs, and who are in need of special education and related services are identified, located, and evaluated in accordance with these regulations, including a practical method of determining which children are currently receiving needed special education and related services and which children are not currently receiving needed special education and related services;

501.2(b) Policies and procedures which insure that: the Massachusetts Student Record Regulations are implemented; parents are not charged a fee for copies of student record information if to do so would effectively prevent the parents from exercising their right to inspect and review those records; and no fee is charged to parent to search for or to retrieve student record information;

501.2(c) A statement of a goal of providing full educational opportunity to all children in need of special education aged 3 through 21 and a detailed timetable for accomplishing this goal;

501.2(d) A description of the kind and number of facilities, personnel, and services necessary to provide full educational opportunity to all children in need of special education. The plan shall include the specific facilities in which the school committee will provide special education in accordance with ¶508.0, including the specific manner in which the school committee shall provide accessible programs to children with limited mobility, visual, hearing, or other physical impairments in accordance with Section 504 of the Rehabilitation Act of 1973 and other applicable laws and regulations;

501.2(e) A current list of special education personnel, their area(s) of certification or approval, and the role in which they are employed; and a description of non-educational personnel pursuant to ¶502.12(c)(ii);

501.2(f) A comprehensive plan to provide training to personnel, addressing the following:

501.2(f)(i) Procedures for assessing personnel and in-service training needs;

501.2(f)(ii) Procedures and activities to be developed in consultation with personnel affected, for training elementary as well as secondary regular classroom teachers, special education personnel, and other school personnel, through methods including, but not limited to, the general information, training and inservice education to be made available to all school personnel in accordance with this paragraph;

501.2(f)(iii) A plan for providing needed training for instructional, related services, and support personnel (including parents and nonprofessional personnel);

501.2(f)(iv) Workshops, in-service programs or courses, or other professional development activities designed to develop and increase teacher skills and competencies related to these regulations;

501.2(f)(v) General information consisting of a comprehensive summary of current special education regulations and applicable school policies;

501.2(f)(vi) The specific manner in which the school committee will implement a training program for operators of vehicles carrying children in need of special education. Such training program shall be consistent with the requirements of ¶804.3;

501.2(f)(vii) The specific manner in which the school committee will train all persons collecting or using personally identifiable information, regarding the confidentiality requirements of the Massachusetts Student Record Regulations; and

501.2(f)(viii) Procedures for evaluating the effectiveness of inservice training provided by the school committee and the effectiveness of educational practices used within the school district.

501.2(g) A plan which indicates factors (including lack of facilities or programs) which contribute to the placement of students in more restrictive settings, and the efforts the school committee has made and plans to make to increase the district capacity to serve students in less restrictive environments;

501.2(h) Procedures to ensure that the school committee makes provisions for participation of and consultation with parents of children in need of special education as required by these regulations;

501.2(i) The specific manner in which the school committee shall make the program plan and related documents available to parents and the general public;

501.2(j) Procedures to ensure that to the maximum extent appropriate, and consistent with §§500.0 and 502.13, the school committee provides special services to enable children in need of special education to participate in regular educational programs. The plan shall state the number of children in need of special education served through each of the program prototypes described in §502.0; the special education and related services available which are the responsibility of the school committee, those that will be delivered through a collaborative or other agreement under §§201.1 (b) and 201.3, and those that will be delivered in accordance with §502.4 (i); and describe the continuum of placements available for children in need of special education;

501.2(k) Procedures to assure that the school committee complies with the requirements of Chapter 3 pertaining to the development and provision of IEPs to students in need of special education, including immediate implementation of IEPs upon parental acceptance, the composition of TEAM and review meetings, the conduct of evaluations, notice to parents of TEAM and review meetings, scheduling and conduct of such meetings, and efforts to assure parental participation in such meetings;

501.2(l) How the school committee will use the funds provided under Part B of the Individuals with Disabilities Education Act (IDEA) during the next school year, such statement to be up-dated annually as provided in §501.3;

501.2(m) The specific methods the school committee will use to evaluate special education programs during the next school year, in accordance with §506.1, such statement to be updated annually as provided in §503.0;

501.2(n) The specific manner in which the school committee will provide transportation to children in need of special education;

501.2(o) The specific manner in which the school committee shall inquire and have continuous liaison with the Executive Office of Health and Human Services and other appropriate departments pursuant to §§304.8 and 322.18.

501.3 Annual update of program plan. In accordance with the provisions in §501.1, the school committee shall submit on an annual basis, each year subsequent to Department approval of the three year program plan, the following:

501.3(a) An assurance that the program plan originally approved by the Department, represents a current description of the specific manner in which the school committee provides special education in accordance with these regulations except as modified in ¶501.3(b).

501.3(b) If the school committee proposes to change any part of the program plan as originally approved and such information is not otherwise required by ¶501.3 (c) or (d), the school committee shall submit such proposed amendment to the Department for approval. Said program plan, as amended, shall be implemented upon approval by the Department. If the Department denies approval of the program plan, as amended, the provisions of ¶501.1 (b) regarding notice and hearing shall apply.

501.3(c) An update indicating how the school committee will use the funds provided under Part B of the IDEA during the next school year; and

501.3(d) An update of the specific methods the school committee will use to evaluate special education programs during the next school year, in accordance with ¶506.1.

502.0 Program prototypes.

This paragraph contains a list and description of the program prototypes. A child placed in any program prototype shall be eligible, on the same basis as other children, for the auxiliary, vocational education, supportive and remedial services that are provided as part of the regular education program to which the child may be assigned. A program prototype is less restrictive than another program prototype if it affords children with special needs more opportunity to be educated with children without special needs than the other.

502.1 Regular education program with modifications.

Each school committee shall provide a program within this prototype to each child in need of special education for whom an IEP specifies such a program. Programs within this prototype shall have the following characteristics:

502.1(a) The child shall be assigned to a regular education program. Except to the extent both permitted and required by the provisions of ¶502.1(b), the child shall not leave such regular education program and shall be treated no differently than the other children in such program.

502.1(b) In order to promote the provision of a free appropriate public education in the least restrictive environment, the special education component of the child's program shall consist of one or more of the following:

502.1(b)(i) Any of the services listed in ¶503.2 that are specified by the TEAM to be provided directly to the child. Such services shall be provided within the classroom in which the child's regular education program is being conducted.

502.1(b)(ii) Modification of the child's regular education program as specified by the TEAM. Such modifications shall be made by the regular classroom teacher who normally conducts the child's regular education program. Personnel specified by the Administrator of Special Education shall provide support services, or training where the TEAM has recommended such training in place of such support services to assist the regular education program teacher in making the specified modifications and in carrying out the requirements of the child's IEP.

502.1(c) For each child placed in this prototype, the school committee shall make available, to implement the child's IEP, the personnel specified by the Administrator of Special Education.

502.1(d) Each school committee shall provide all aspects of programs within this prototype within public school regular education facilities.

502.2 Regular education program with no more than 25% time out.

All of the provisions of §502.1 shall apply to programs within this prototype; provided, however, that such programs shall have the following additional characteristics:

502.2(a) The child shall be removed from the regular education program and classroom to receive any of the services listed in §503.2 which the TEAM specifies should be provided to the child outside the regular education classroom; provided, however, that the child shall not be removed from the regular education classroom for more than 25% of the class time of each school day.

502.2(b) The number of children in any one instructional group shall not exceed the following limits:

502.2(b)(i) Eight children for each teacher or other qualified professional.

502.2(b)(ii) Twelve children for each teacher or other qualified professional where such teacher or professional is assisted by one aide.

502.2(b)(iii) Sixteen children for each teacher or other qualified professional where such teacher or professional is assisted by two aides.

502.2(c) The grouping of children in each instructional group shall be compatible with the methods and goals stated in each child's IEP.

502.2(d) Each school committee shall provide all aspects of programs within this prototype in public school regular education facilities; provided, however, that a child in this prototype may be provided work study placement, occupational opportunities and job site visits outside of a public school.

502.3 Regular education program with no more than 60% time out.

All of the provisions of §502.2 shall apply to programs within this prototype; provided, however, that the child may be removed from the regular education program and classroom, to receive services as described in §502.2(a), for no more than 60% of the class time of each school day.

502.4 Substantially separate program.

Each school committee shall provide a program within this prototype to each child in need of special education for whom the IEP specifies such a program. Programs within this prototype shall have the following characteristics:

502.4(a) The child shall be assigned to a program or programs made up entirely of children in need of special education.

502.4(b) In each program the number of children for each teacher shall not exceed eight, and for each teacher with an aide, shall not exceed twelve. This ratio of children to staff shall apply when one or more students in this prototype are receiving special education with students from other prototypes.

502.4(c) The ages of the youngest and oldest child in each program shall not differ by more than forty-eight months. A written request for approval of a wider age range may be made to the Division, which may approve such request.

502.4(d) The grouping of children in each program shall be compatible with the methods and goals stated in each child's IEP.

502.4(e) The child shall leave the program to receive services and to participate in activities specified by the TEAM pursuant to ¶322.7 and ¶322.12.

502.4(f) RESERVED

502.4(g) For each child placed in this prototype, the Administrator of Special Education shall provide or arrange to have provided the personnel required to implement the child's IEP.

502.4(h) Each school committee shall provide all aspects of programs within this prototype within public school regular education facilities, except as provided under ¶502.4(i).

502.4(i) Notwithstanding ¶502.4(h), a school committee may operate a substantially separate special education program in a facility other than a public school regular education facility, provided that the program is reviewed and approved by the Division prior to implementation, such review and approval shall be required as part of the school committee's program plan under ¶501.2. In order for a program to be approved under this paragraph, the school committee shall submit to the Division written evidence that:

502.4(i)(i) The program meets the requirements of ¶¶502.4(a) through 502.4(g) inclusive.

502.4(i)(ii) The school committee cannot operate the program within a public school regular education facility for programmatic reasons. Lack of accessibility for children with limited mobility, vision, hearing, or other physical impairments or lack of available space shall not be considered sufficient programmatic reasons for approving a program under this section.

502.4(i)(iii) The school committee has incorporated into the program procedures for moving the children into a public school regular education facility.

502.4(i)(iv) The facility in which the program is located has been inspected for health and safety by appropriate state agencies and the local fire inspector. A copy of the certificates of inspection shall accompany the request for approval of the program.

502.5 Day school program.

Each school committee shall arrange for the provision of programs within this prototype to each child in need of special education only when the nature or severity of the special need is such that education in a less restrictive environment with the use of supplementary aids and services cannot be achieved satisfactorily. Programs within this prototype shall have the following characteristics:

502.5(a) The child shall be placed in a program at a facility other than a public school regular education facility.

502.5(a)(i) The child's program shall have a duration of at least five hours each day unless the TEAM states that a different duration is necessary to meet the child's special needs. In such case, the TEAM shall state on the IEP the reason for such duration.

502.5(a)(ii) The site of the program shall be within one hour traveling time, one-way, from the child's home; provided, however, that where the TEAM determines that a longer traveling time may be necessary it shall so specify as part of the transportation plan on the child's IEP.

502.5(b) Each school committee shall arrange for the provision of all programs within this prototype through the procedures described in ¶504.0.

502.6 Residential school program.

Each school committee shall arrange for the provision of a program within this prototype to each child in need of special education for whom an IEP specifies such a program based on a finding by the TEAM that a residential school program is necessary to meet the educational goals and objectives in the IEP. Programs within this prototype shall have the following characteristics:

502.6(a) The child shall be placed in a program at a facility other than a public school regular education facility and shall live in such facility.

502.6(b) Each school committee shall arrange for the provision of all programs within this prototype through the procedures described in ¶504.0.

502.7 Home or Hospital Program.

There are two types of programs within this prototype, Type A and Type B. For both types, the child's physician rather than an IEP specifies the home or hospital placement. In a Type A program, the entire program is provided without TEAM involvement. In a Type B program, the TEAM develops an IEP for the child.

502.7(a) Type A program.

Each school committee shall provide a Type A home or hospital program to each child who, in the judgement of the child's physician, will have to remain at home or in a hospital on a day or overnight basis, or any combination of both, for a period of not less than fourteen or more than sixty days during any school year, in order not to endanger the health or safety of such child or that of others. A Type A home or hospital program shall be provided, upon request, for a chronically ill child who will be at home or in a hospital for recurrent periods of less than 14 days each. The school committee shall provide the child's physician with information presenting the programs which the school system could make available as alternatives to the home or hospital program. A Type A home or hospital program shall have the following characteristics:

502.7(a)(i) It shall be provided at the child's home or at the hospital to which the child is confined.

502.7(a)(ii) It shall be provided at a time mutually agreed to by the child's parent and the Administrator of Special Education.

502.7(a)(iii) Its content shall be the same as the content of the program which is being provided in the class which the child would normally attend if able to attend school; provided, however, that such program shall be reduced if the child's physician states that a lesser curriculum would be in the child's best interests.

502.7(a)(iv) For each child placed in a Type A program who is not otherwise a child with special needs, the school committee shall assign a teacher to provide the child's program. The teacher providing a Type A program shall instruct the child in accordance with the program content required by §502.7(a)(iii), coordinate such instruction with the teachers of the program which the child would be attending if able to attend school, and report on the child's progress to the teachers and the principal of the school the child would normally attend.

502.7(a)(v) For each child with special needs placed in a Type A program, the school committee shall assign a teacher to provide the child's IEP. The child's regularly scheduled teachers shall guide the work of the assigned teacher. The teacher providing a Type A program shall instruct the child in accordance with the program content required by §502.7(a)(iii), coordinate such instruction with the teachers of the program which the child would be attending if able to attend school, and report on the child's progress to the teachers and the principal of the school the child would normally attend.

502.7(a)(vi) The physician who stated that the child must remain at home or in the hospital for more than fourteen days shall state, in writing, on a form specified by the Division, and make available to the school committee the following:

502.7(a)(vi)(1) The specific reasons why the child must remain at home or in a hospital.

502.7(a)(vi)(2) The criteria under which the child can return to a program provided within a public school regular education facility, and the expected date of such return.

502.7(a)(vi)(3) Whether the child requires a reduced program as authorized in §502.7(a)(iii).

502.7(a)(vii) Whenever a psychiatrist recommends a Type A program for a child and the child has not had an evaluation during the past six months, the Administrator of Special Education shall immediately refer the child for an evaluation.

502.7(b) Type B programs: Children who qualify for such programs

Each school committee shall provide a Type B program for each child who falls into one or more of the following categories:

502.7(b)(i) A child who would qualify for a Type A program except that the child's physician has referred the child for an evaluation.

502.7(b)(ii) A child who, in the judgement of the child's physician, will have to remain at home or in a hospital for more than sixty days during any school year. The Administrator of Special Education shall refer such child for an evaluation.

502.7(b)(iii) A child who is in, or is to be placed in, a pediatric nursing home or a long term care facility for rehabilitative services.

502.7(c) Type B programs: Characteristics.

Type B programs shall have the same characteristics as Type A programs; provided, however, that the content of the child's program and the personnel used to provide it shall be those specified by the IEP.

502.8 Program for children ages three and four.

Each school committee shall provide or arrange for the provision of a program within this prototype or any other applicable prototype (except prototype ¶¶502.1 through 502.5) to each child in need of special education of age three or four for when an IEP specifies such a program. Each program within this prototype shall have a curriculum based on developmental sequence of growth, shall involve the family in the implementation of the child's IEP, and shall be coordinated with other services being provided to the child. Programs within this prototype should be specially designed to serve solely three and four year old students; however if a TEAM determines that it is developmentally appropriate, a child who turns five many remain in the ¶502.8 program s/he was attending for the duration of the school year in which the child's fifth birthday occurs. For purposes of this regulation, the school year may include the summer preceding and following the child's fifth birthday, if the educational plan calls for an extended year program. For reporting purposes, a five year old child remaining in a preschool program should be reported under a school age prototype once s/he turns five.

This prototype includes, but is not limited to, the following programs:

502.8(a) Home-based programs which include services to children at the location of their primary care providers (either the child's home, family day care home licensed by the Office for Children, or day care provider) and which have the following characteristics:

502.8(a)(i) Home visits arranged with the family or primary care providers, scheduled at least weekly.

502.8(a)(ii) Instruction for the parents or primary care provider, including demonstration of specific tasks geared to the child's learning style, specialized materials, equipment and parent discussion groups.

502.8(a)(iii) Provision of developmental toys and materials for the parent or primary care provider to use with the child.

502.8(a)(iv) Regularly scheduled group sessions for parents. Decisions on content for such sessions as well as their time and location shall be made in consultation with parents.

502.8(b) Integrated center-based programs, designed to serve the general population of children ages three and four but including up to fifty percent children with special needs. Such programs shall be licensed by the Office for Children under applicable regulations and guidelines unless operated by a school committee. In such programs operated by a school

committee, the maximum number of children in a class shall not exceed ten with a teacher and fifteen with a teacher and an aide. The maximum number of children in a class shall not exceed fifteen.

502.8(c) Separate center-based programs, in which more than fifty percent of the children are children with special needs. Such programs shall be licensed by the Office for Children and approved by the Division under applicable regulations and guidelines, unless operated by a school committee. In such programs operated by a school committee, the number of children for each teacher shall not exceed six, and for each teacher with an aide shall not exceed nine. The maximum number of children in a class shall not exceed nine.

502.9 Diagnostic Evaluation

Each school committee shall provide services under this prototype to each child in need of special education for whom a TEAM recommends it.

502.9(a) This prototype shall be used where extended evaluation is necessary because the assessments which TEAM members make of the child are so inconclusive that the TEAM is unable to set objectives for the child to achieve and is consequently unable to write an IEP for the child. It may also be used while evaluation is ongoing for a preschool child, where initial placement is needed for diagnostic or observational purposes. Additionally, this prototype may be used to provide for further evaluation regarding the placement of a child in need of special education into a vocational program.

502.9(b) Whenever a TEAM recommends a diagnostic evaluation for a child it shall, in a format specified by the Division:

502.9(b)(i) Prepare a list of specific questions about the child which the personnel providing services shall attempt to answer.

502.9(b)(ii) List the diagnostic procedures for answering those questions.

502.9(b)(iii) Specify the types and amounts of services needed. The selection of such services shall be based on the nature of the questions to be answered.

502.9(c) For each child placed within this prototype, the school committee shall make available the personnel specified by the Administrator of Special Education on the basis of the recommendations of the TEAM. Such personnel shall:

502.9(c)(i) Conduct appropriate diagnostic procedures to answer the questions posed by the TEAM.

502.9(c)(ii) Document the procedures attempted and the results obtained.

502.9(c)(iii) Meet with the TEAM at least twice during the diagnostic evaluation and communicate weekly with the TEAM to discuss the results and progress to date and to revise the list of questions to which they are seeking answers.

502.9(d) When a child is provided services under this prototype:

502.9(d)(i) Services may be provided on a full or part-time basis. If services are provided on a part-time basis, the child shall be placed for the remainder of his/her time in a regular education program or a program for which the child qualifies under these regulations.

502.9(d)(ii) The duration of the child's school day including both the diagnostic portion and any other portions, shall be specified by the TEAM.

502.9(d)(iii) The period for evaluation under a diagnostic prototype shall terminate when all the questions posed by the TEAM are answered, and in no case shall exceed eight weeks of school.

502.9(d)(iv) Five days before the end of the child's diagnostic evaluation, the TEAM shall reconvene to write an IEP for the child based on the findings made. The personnel who provided diagnostic and evaluative services to the child shall be added to the TEAM which writes the child's IEP.

502.10 Programs for children in need of special education who reside in certain facilities under the control of the State Department of Mental Health, Mental Retardation, Public Health, and Youth Services, as well as other agencies so designated by the Board of Education.

The Division, through its Bureau of Institutional Schools, shall provide or arrange for the provision of programs for children in need of special education who reside in certain facilities under the control of the State Department of Mental Health, Mental Retardation, Public Health, and Youth Services, as well as other agencies so designated by the Board of Education. The arrangement of such services shall be in conjunction with, and with the involvement of, the TEAM and the Administrator of Special Education of the school committee with jurisdiction over such child pursuant to Chapter 2 and ¶700.2 of these regulations. Programs within this prototype shall have the following characteristics:

502.10(a) This prototype is interim in nature in that it is only to be used while a child is an admitted resident of the aforementioned types of state (and county) facilities.

502.10(a)(i) The department of Education has no control over or involvement in admissions to the types of facilities which are outlined in this prototype.

502.10(a)(ii) A child entering such facility with an existing IEP shall be provided with a comparable program to the extent possible until the TEAM meets to review the child's needs pursuant to ¶¶333.0, and 334.0 of these regulations.

502.10(a)(iii) A child with no IEP upon admission, but who may need special education, may be referred and evaluated pursuant to Chapter 3 of these regulations.

502.10(a)(iv) A child discharged from such facility is no longer eligible for this prototype, unless readmitted at a future date, and the TEAM shall be reconvened to determine the need and appropriate special education services which are required.

502.10(b) All IEPs for children in this prototype must be signed by the appropriate Bureau of Institutional Schools designee and the Administrator of Special Education of the school committee with jurisdiction over such children.

502.10(c) Where a child's program is delivered off the grounds of the state or county facility, the site of the program shall be within one hour traveling time, one-way, from the

facility in which the child resides; provided, however, that where the TEAM determines that a longer traveling time may be necessary it shall so specify on the transportation plan of the child's IEP.

502.10(d) Class size for children within this prototype will not exceed requirements pursuant to ¶502.2(b).

502.10(e) All rights and protection granted through these regulations will be afforded to children whose IEP is covered under this prototype.

502.11 Programs for children in need of special education who are fourteen through twenty-one.

502.11(a) Children in need of special education who are fourteen through twenty-one shall, subject to the provisions of ¶207.0, be eligible for programs within each of the program prototypes on the same basis as are other children in need of special education.

502.11(b) If no program within one or more of the program prototypes is suitable for a child in need of special education who is fourteen through twenty-one, the TEAM shall identify or designate a suitable program for such child, shall justify the need for such program and inappropriateness of other prototypes, and document such justification in the child's file.

502.12 General provisions applicable to more than one prototype.

The following is a list of provisions which, by their own terms, are applicable to more than one prototype:

502.12(a) The limits on the number of children in any one instruction group found within program prototypes ¶¶502.2 and 502.3 may be increased by two with approval of the Administrator of Special Education. A written request for approval of up to two additional students in ¶¶502.2 and 502.3 program prototypes may be made to the Division, which may approve such request. For all other prototypes, a written request for approval of up to two additional students in any one instruction group may be made to the Division, which may approve such request.

502.12(b) Each school committee shall provide or arrange for the provision of the parent and child counseling services described in ¶503.2(g) when recommended by a TEAM, to each parent of a child in need of special education, regardless of the prototype in which that parent's child is placed. No parent shall be required to receive such services and the school committee shall obtain the written consent of the parent affected before providing or arranging for the provision of such services.

502.12(c) Except as otherwise specified, persons providing special education to children in need of special education within prototypes ¶¶502.1, 502.2, 502.3 and 502.4, shall be qualified as required by the following provisions:

502.12(c)(i) Any person who provides the services described in ¶503.1 directly to children in need of special education or who provides such services directly to the regular or special classroom teacher shall be an appropriately certified or approved

special education teacher. A regular classroom teacher who provides such services to a child in the teacher's regular class, or a teacher aide or student teacher providing special education services under the direct supervision of an appropriately certified or approved special education teacher, need not comply with this requirement in order to provide such services.

502.12(c)(ii) Any person including non-educational personnel, who provides one of the services listed in §§503.1 and 503.2 directly to children in need of special education or who provides support services directly to the regular or special classroom teacher shall be appropriately certified, licensed, board-registered or otherwise approved to provide such services by the relevant professional standards board or agency for their profession. If no such board or agency exists, the Administrator of Special Education shall assure the appropriateness of using the non-educational personnel in each individual case. The school committee's annual program plans filed pursuant to §501.0 of these regulations shall include a description of the use of such non-educational personnel, and shall be updated as necessary.

502.12(c)(iii) The following categories of persons may perform psychological functions under these regulations:

502.12(c)(iii)(1) Persons certified as school psychologists by the Board of Education pursuant to M.G.L. c.71, §38G and the regulations thereunder. Such certified school psychologists may perform psychological functions as part of their employment by a public or private school, or outside a school setting provided they use the title "Certified School Psychologist".

502.12(c)(iii)(2) Persons licensed as psychologists by the Board of Registration of Psychologists under M.G.L. c.112, §§118-129, or exempted from licensure under M.G.L. c.112, §123. Psychologists who are so licensed or exempted from licensure, but are not certified school psychologists in accordance with M.G.L. c.71, §38G and the regulations thereunder, may provide psychological services but may not serve as school psychologists.

502.12(c)(iv) The requirements of §502.12(c) shall not apply to parents of children in need of special education when such parents are providing services to their own children. No parent or guardian of a child in a special education program shall be required to perform duties not required of a parent of a child in a regular education program.

502.12(d) Each school committee shall provide or arrange for the provision of physical education services, adapted if necessary, for each child in need of special education, and shall include such services in the child's IEP. Such services shall be provided in the regular physical education program, unless the child's IEP specifies a different physical education program designed to meet the child's needs.

502.12(e) No school committee shall place a child in a §502.4, §502.4(i), or private day school or residential school program without first ensuring that a plan to increase the district's capacity to serve students in less restrictive settings has been submitted to the Division under §501.2(g), as part of the plan under §501.0.

502.12(f) The child's program shall be conducted for the number of days in the public school year, unless the TEAM states that a program with a longer or shorter duration is in the child's best interests, in accordance with ¶322.18.

502.12(g) The daily duration of the child's program shall be equal to that of the regular school day unless the TEAM states that a different duration is necessary to provide a free appropriate public education to the child. In such case the duration of the program shall be specified by the TEAM, and the TEAM shall state on the IEP the reason for such different duration.

502.13 Equal opportunity for participation.

Each school committee shall insure that children in need of special education have an equal opportunity to participate in and, when appropriate, receive credit for the educational, non-academic, extracurricular, and ancillary programs, services, and activities with children in the regular education program. Such programs, services, and activities include, but are not limited to, art, music, industrial arts, consumer and homemaking education, vocational education, work study, counseling services, health services, transportation, physical education, athletics, recreational activities, school-sponsored groups or clubs, and employment opportunities.

503.0 Special education and related services.

This paragraph contains further clarification of the special education and related services which school committees are required to provide or arrange to have provided to children with special needs.

503.1 "Special education" shall consist of specially designed instruction at no cost to the parents to meet the unique needs of a child in need of special education, including development of the child's educational potential and includes the early identification and assessment of special needs in children. The term shall include: (a) instruction conducted in the classroom, in the home, in hospitals and institutions and in other settings; and (b) instruction in physical education. It shall include the instructional services which the various categories of certified or approved special education teachers are professionally qualified to provide. Special education shall include speech and language therapy, physical education, such as adapted physical education, and vocational education if such therapy or education consists of specially designed instruction at no cost to the parents to meet the unique needs of a child with special needs.

503.2 "Related services" shall include transportation under Chapter 8 of these regulations and such developmental, corrective, and other supportive services as are required to assist a child with special needs to benefit from special education. For each child with special needs found to require related services, the school committee shall provide or arrange for the provision of such services to the child or, if the service is for the child's parents, to the parents as provided in ¶¶503.2(g) and 503.2(i). Related services to the child or to the child's parents shall be provided through the prototype in which the child is placed and shall be directly related to the achievement of the short and long term educational objectives specified in the TEP. Related services include, but are not limited to:

503.2(a) Vocational, career and rehabilitation counseling;

503.2(b) School health services, meaning services provided by a qualified school nurse or other qualified person;

503.2(c) Orientation and mobility services (peripatology);

503.2(d) Occupational therapy;

503.2(e) Physical therapy;

503.2(f) Speech and language therapy;

503.2(g) Social and psychological services limited to the following:

503.2(g)(i) Group sessions conducted within the public school regular education facility by a school adjustment counselor, social worker, psychologist or psychiatrist for children in need of special education or parents of such children. Services to the parents, as provided for in this paragraph, shall be directly related to the achievement of the short and long term objectives of the child's IEP;

503.2(g)(ii) Individual consultation by a school adjustment counselor, social worker, psychologist or psychiatrist about an identified problem with a child in need of special education or the parents of such child;

503.2(g)(iii) Crisis intervention by a school adjustment counselor, social worker, psychologist or psychiatrist consisting of short term casework with a child in need of special education or the parents of such child;

503.2(g)(iv) Individual counseling provided by a school adjustment counselor, social worker, psychologist or psychiatrist to a child in need of special education or the parents of such child. Services to the parents, as provided for in this paragraph, shall be directly related to the achievement of the short and long term objectives of the child's IEP;

503.2(g)(v) Consultation between a school adjustment counselor, social worker, psychologist or psychiatrist and a regular education teacher concerning a child in need of special education.

503.2(h) Audiology

503.2(i) Medical services for diagnostic and evaluative purposes, meaning services provided by a licensed physician to determine a child's need for special education and related services. Such medical services shall include prescribing or referring a child for physical and occupational therapy.

503.2(j) Parent-child instruction: training and support provided to a child's parents, as recommended by a TEAM, to enable the parents to participate in educating their child. The school committee shall make available the personnel specified by the Administrator of Special Education to provide such training and support.

503.2(k) If a TEAM recommends a service other than the special education and related services defined in these regulations or materials and equipment in addition to those specified in §507.0, the Administrator of Special Education shall refer the matter to the appropriate agency of the Executive Office of Health and Human Services. If the service or specialized materials or equipment is not available, the Administrator of Special Education shall refer the request to the Interagency Children's Service Team as provided by M.G.L. c.28A, §6A. The Interagency Children's Service Team, utilizing the procedures authorized by the Secretary of the Executive Office of Health and Human Services, shall notify the Administrator and the

child's parents in writing as to whether or not the agencies within the Executive Office of Health and Human Services are able to provide the requested service, materials or equipment.

504.0 Providing day school or residential school programs.

Each school committee shall provide or arrange for the provision of all day school (prototype ¶502.5) and residential school (prototype ¶502.6) programs in compliance with the following procedures and requirements:

504.1 Placement within city, town or school district preferred.

Each child in need of special education who requires a day school or residential school program shall be placed in a program within the city, town, or school district in which such child resides, if a suitable program is available therein. Only if there is no suitable program within such city, town or school district shall such child be placed in a program outside of such city, town or school district.

504.2 Procedures for day school or residential school placements in Chapter 766 Approved Programs.

The following procedure shall be used for placing children in need of special education in day school (prototype ¶502.5) or residential school (prototype ¶502.6) programs:

504.2(a) The Administrator of Special Education shall assist the TEAM, in consultation with the child's parents, to determine whether there is available within or outside the city, town or school district in which the child resides a program that complies with all elements of the child's IEP. The program chosen shall be the one that meets the requirements of the child's IEP and these regulations and that is closest to the child's place of residence.

504.2(a)(i) If the TEAM identifies a private day or residential school program, the TEAM shall include in the IEP the circumstances under which the child would be eligible to return to the public school in a less restrictive program.

504.2(b) If a private school or facility implements a child's IEP, responsibility for compliance with these regulations shall remain with the school committee.

504.2(c) Requirements of contracts between school committees and Chapter 766 approved private schools.

The school committee shall enter into a contract or agreement with the day or residential school in which the child is placed. Each such contract shall include the following requirements which such private school must meet:

504.2(c)(i) The private school shall comply with all elements of the IEP for the child in need of special education and shall provide, in writing, to the Administrator of Special Education detailed documentation of such compliance:

504.2(c)(ii) At least quarterly, the private school shall review the progress of each child in need of special education toward meeting the criteria for placement of such child in a less restrictive program prototype. If such child has met the criteria, the private school shall inform the Administrator of Special Education in writing;

education and shall make available to authorized school personnel from the responsible school system any records pertaining to the child in accordance with the Massachusetts Student Record Regulations;

504.2(c)(iv) The private school shall allow each school committee which has placed a child in it to inspect its facilities and to observe its operation at any reasonable time;

504.2(c)(v) The private school shall afford publicly-funded students all the substantive and procedural rights held by public school students and shall comply with all other applicable requirements of these regulations, the Regulations for Approval of Private Schools, and policy statements and directives issued by the Division;

504.2(c)(vi) No school committee shall contract with any private school that discriminates on the grounds of race, color, religion, or national origin, or that discriminates against qualified handicapped persons.

504.3 Procedures for approval of placement in day or residential school programs.

In addition to the procedures required by §504.2, whenever the TEAM recommends a private day or residential school program for a child, such school must be approved in accordance with the Regulations for the Approval of Private Schools subject to the following:

504.3(a) If the TEAM is unable to find an appropriate placement in an approved private school, the Administrator of Special Education shall request assistance from the Division. Such request shall be in writing and shall contain copies of all assessments from the evaluation or reevaluation, the complete referral package that had been sent to approved private schools, a listing of all approved private schools that had been considered, and the decision given by such school to refuse admission.

504.3(a)(i) In addition, where the TEAM reconvenes to consider alternative placements, the Division may request to participate as a member of the TEAM.

504.3(b) In the event that there is neither an approved in-state or out-of-state program available to meet the expressed needs of a student, the Administrator of Special Education shall request the Division to approve a waiver seeking a sole source of care placement. The Division shall consider the following in determining whether to grant such request:

504.3(b)(i) All available approved programs have been pursued, and all those facilities have indicated they cannot serve the student as presented.

504.3(b)(ii) The proposed program, if located within the Commonwealth, is approved by the local school committee pursuant to M.G.L. c.76, §1, and has demonstrated capability for providing the services as outlined in the student's IEP.

504.3(b)(iii) The proposed program, if located outside the Commonwealth, is approved by the host state as a special education facility and has demonstrated capability for providing the services outlined in the student's IEP.

504.3(b)(iv) The staff providing the IEP services are appropriately certified pursuant to ¶502.12(c)(ii) of these regulations.

504.3(b)(v) A detailed monitoring plan designed to ensure implementation of the student's IEP.

504.3(b)(vi) Any other documentation or assurances required by the Division or the state agency responsible for setting approved rates for instruction and support services.

504.3(c) No child shall be placed in an unapproved day or residential program prior to Division approval of the sole source of care waiver request.

504.4 Funding arrangements for private placements.

Subject to the provisions of Section 18 of Chapter 766 of the Acts of 1972 for "grandfathered" children, the following shall apply in each case in which a school committee, pursuant to ¶¶504.2 and 504.3, places a child in need of special education in a private day or residential school program:

504.4(a) The school committee shall pay to the private day or residential school program the full cost of instruction and support actually rendered or furnished to such child by the program, in an amount not to exceed the approved rate for the school set by the state agency responsible for setting such rates.

504.4(b) The school committee shall receive state aid for a private placement made under these regulations, in accordance with applicable provisions of the General Laws.

504.4(c) No parents shall be required to bear any part of the cost of the instruction and support actually rendered or furnished to their child by a private school in which such child is placed pursuant to ¶¶504.2 and 504.3 or an order under Chapter 4. For purposes of this paragraph, "the cost of the instruction and support" includes non-medical care and room and board in a residential school program.

504.4(d) Special education students in transition programs shall be reported for Chapter 70 purposes, in the prototype in which they are being served. Students spending more than 50% of their time in the private school will be reported as a ¶502.5(day) or ¶502.6 (residential) prototype. Students spending more than 50% of their time in the public school will be reported as a ¶¶502.2, 502.3, 502.4 or 502.4(i) prototype. Services provided by the private school will be contracted for on a fee for service basis under ¶503.0 of the Chapter 766 Regulations.

504.4(e) The School committee shall notify the Division, in a form specified by the Division, of any placement of a child with special needs in a ¶¶502.5 or 502.6 prototype program where the Division will bear any financial responsibility. The school committee shall also follow any provisions of ¶333.7.

504.5 Funding arrangements for resident children in institution education department placements.

The following provisions shall apply in each case in which a school committee places a child in need of special education in a residential program in an institution education department as defined in §502.10.

504.5(a) The school committee which places the child shall have deducted from its annual distribution pursuant to M.G.L. c.58, §18A an amount not exceeding the cost of educating the child in the institution education department, provided that said amount shall not be less than the average annual per pupil expenditure for pupils of comparable age within the city, town, or regional school district.

504.5(b) No parents shall be required to bear any part of the cost of the placement of their child in an institution education department. For purposes of this paragraph, "the cost of the placement" includes nonmedical care and room and board in a residential school program.

505.0 Obligation of the school committee to provide for parental involvement.

Each public or private school, agency or institution which provides special education to a child pursuant to these regulations, shall make every effort to elicit the interest and encourage the participation of the child's parents (as well as the child who is at least fourteen years old) to the greatest degree possible in the special education program of their child, including but not limited to:

505.1 Offering parents consultation regarding the development and future opportunities of their children.

505.2 Providing parents the same opportunity to observe their child in his or her ongoing educational program, that they would have if the child were placed in the regular education program.

506.0 Program evaluation, improvement and development.

Each school committee shall establish a system of evaluating the effectiveness of special education programs, related services and administrative procedures it provides or arranges to have provided.

506.1 Such system shall include methods for determining which programs, services and procedures are effective in assisting children in need of special education to achieve the goals set in their IEPs in the least restrictive environment and which programs, services and procedures need improvement or must be developed.

506.2 Any facility outside the jurisdiction of a school committee with which the school committee contracts to provide special education programs or related services shall be consulted in connection with the establishment of criteria for its evaluation, and shall be furnished a written copy of such criteria. The effectiveness of each locally funded program, related services, and administrative procedure shall be evaluated at least every three years, with some evaluation activities taking place every year.

506.3 Each school committee shall submit to the Division as part of the plan described in §501.0 a detailed description of the methods it will use to evaluate special education programs, related services and administrative procedures during the next school year. It shall also submit as part of the plan a copy of the summary of the completed evaluation, including recommendations for improvement or development and evidence of implementation of such recommendations. Supporting documentation for all evaluation activities shall be kept on file by the school committee.

506.3(a) The plan of evaluation required under ¶506.2 shall describe how the school committee uses information it gathers from annual IEP reviews required under ¶¶333.0 - 333.3 in its overall plan to measure the effectiveness of special education programs, related services and administrative procedures.

507.0 Specialized materials and equipment.

Each school committee shall provide or arrange for the provision of all specialized materials and equipment which the TEAM states are necessary to implement the IEP of each child in need of special education. Specialized materials and equipment shall be of good quality and shall be suitable for the role they are to play in each child's IEP. For purposes of this paragraph, "specialized materials and equipment" shall include items required in order for the child to participate in the educational program and shall not include items such as eyeglasses, hearing aids and leg braces which the child uses outside of the educational program, or materials and equipment normally available in the regular education program. However, the school committee shall determine whether the hearing aids worn by deaf and hard of hearing children in school are functioning properly.

508.0 Facilities for children in need of special education.

Public and private school education facilities and programs for children in need of special education shall comply with the following provisions:

508.1 Programs for children in need of special education shall be provided in rooms which are at least equal in all physical respects to the average standards of regular education facilities in the school.

508.2 The public education facilities in which programs for children in need of special education are provided shall be such as to maximize the integration of such children into the life of the school. In order to make this goal possible, and to minimize the separation and stigmatization of children in need of special education, resource rooms and ¶502.4 and ¶502.4(i) prototype programs shall be given equal priority and access in instructional and other space in public schools with regular education programs. The following examples are intended only to illustrate aspects of this requirement and shall not be construed as limiting or defining its scope:

508.2(a) Placing a substantially separate class of fourteen and fifteen-year-old children in need of special education in a part of the school building in which all the other classrooms are occupied by elementary school children would violate the rule of ¶508.2.

508.2(b) Placing a sign saying "special class" on the front of the substantially separate classroom would violate the rule of ¶508.2.

508.2(c) Placing all special education facilities together in one part of a school building would violate the rule of ¶508.2.

508.3 Any child with limited mobility, visual, hearing, or other physical impairments shall have access to school facilities including, but not limited to, those areas necessary to implement the child's IEP, in accordance with federal and state laws and regulations. Each school committee shall provide whatever equipment and make whatever physical adaptations are necessary to comply with this provision. Each school committee shall include in its Three Year Plan the manner in which the school committee shall meet the requirements of this regulation.

508.4 The Division may make unannounced inspections of facilities operated by the school committees to insure that such facilities comply with the requirements of ¶508.0.

Chapter 6 - Parent Advisory Councils; The State Advisory Commission:

600.0 Parent Advisory Councils; Membership.

Each school committee shall establish a Parent Advisory Council (PAC) on Special Education. Membership shall be offered to all parents of children with special needs and other interested parties.

601.0 PAC: Duties.

The PAC shall:

601.1 Advise the school committee on matters that pertain to the education, health, and safety of students with special needs.

601.2 Meet regularly with school officials to participate in the planning, development, and evaluation of the school committee's special education programs.

601.3 Participate in the development and review of the Three Year Program Plan prior to submission.

602.0 PAC: Operational procedures.

The PAC shall establish its own by-laws regarding officers and operational procedures.

603.0 PAC: Supportive services.

In the course of its duties under these regulations, the PAC shall receive assistance from the school committee without charge, upon reasonable notice, and subject to the availability of staff and resources.

604.0 State Advisory Commission: Election and appointment of members.

The membership of the State Advisory Commission (SAC) shall be determined as follows:

604.1 The Board of Education shall appoint at least twelve (12) members to the SAC, who shall be broadly representative of residents of the Commonwealth concerned about special education, including representation across geographical areas. At least half of the members shall be parents whose children receive special education. The remaining members shall include at least one person representative of each of the following groups:

604.1(a) Persons with disabilities.

604.1(b) Teachers of children with special needs.

604.1(c) State and local education officials.

604.1(d) Special education program administrators.

604.1(e) Secondary school students.

604.2 The Commissioners of the Department of Mental Health, Mental Retardation, Public Health, Social Services, Youth Services, and the Office for Children, the Director of the Massachusetts Office

on Disability, and any other designated by the Secretary of the Executive Office of Health and Human Services, shall each appoint a representative to serve ex officio as a non-voting advisory member of the SAC.

604.3 The members of the SAC shall serve for terms of three (3) years each with no members serving for more than two (2) consecutive terms. If a SAC member does not complete the appointed term, the Board of Education shall appoint a member to fill the unexpired term and said member may, upon reappointment, serve two (2) consecutive full terms.

605.0 SAC: Duties.

The SAC shall:

605.1 Advise the Department on unmet needs for special education within the Commonwealth.

605.2 Comment publicly on the State Plan for special education and any regulations proposed by the Department regarding special education and the procedures for distribution of funds under the IDEA.

605.3 Assist the Department in developing and reporting such information as may be required by the United States Department of Education under the IDEA and amendments thereto.

605.4 Assign members to meet periodically with selected constituent groups, such as the members of Parent Advisory Councils, to ensure statewide input to the SAC.

606.0 SAC: Annual report.

The SAC shall submit an annual written report to the Board of Education on or before June 1 of each year.

606.1 Such report shall include a comprehensive summary of statewide findings and recommended changes in any aspect of the provision of special education in the Commonwealth.

606.2 The Department of Education shall implement the recommendations of the SAC or shall state in a written reply to the SAC the reasons why such recommendations cannot or should not be implemented. If agreement cannot be reached, the SAC may request the Board of Education to conduct public hearings to investigate the basis for the disagreement and resolve any dispute between the Department of Education and the SAC.

607.0 SAC: Meetings; operational procedures.

The SAC shall:

607.1 Meet at least once a month and conduct its meetings in accordance with M.G.L. c.30A, and c.11A (the "open meeting law").

607.2 Adopt any further rules of operation which it deems necessary or desirable.

608.0 SAC: Reimbursement.

Subject to appropriation, members of the SAC shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Chapter 7 - Education of Children in Certain Facilities Under the Control of the Department of Mental Health, Mental Retardation, Public Health, Youth Services and other Human Service Agencies so Designated by the Board of Education

700.0 Provision of special education by the Division through its Bureau of Institutional Schools to resident children in certain facilities under the control of the Department of Mental Health, Mental Retardation, Public Health, Youth Services and other Human Service Agencies so Designated by the Board of Education.

The Division, through its Bureau of Institutional Schools, shall provide or arrange for the provision of special education to children in need of special education who reside in certain facilities under the control of the Departments of Mental Health, Mental Retardation, Public Health, Youth Services and other human service agencies so designated by the Board of Education, as defined in ¶115.0 of these regulations. Residential and medical services for such children that have not been recommended by the TEAM in accordance with ¶503.2, shall be provided by the state agency that controls the facility. The duties of the Bureau of Institutional Schools in providing special education to such children shall include:

700.1 Administering and monitoring the use of state and federal funds allocated for special education for resident children in certain facilities under the control of the Department of Mental Health, Mental Retardation, Public Health, Youth Services and other human service agencies so designated by the Board of Education.

700.2 Determining the method, from the options described below, for the provision of special education to each resident child under the jurisdiction of the Bureau of Institutional Schools. Such method shall be determined in consultation with the TEAM and the Administrator of Special Education of the school committee with jurisdiction over such child (under ¶202.1(c) of these regulations), and the appropriate manager of institutional programs, and may utilize one or more of the following, as determined by the Bureau of Institutional Schools:

700.2(a) Staff assigned to the facility.

700.2(b) A collaborative approved by the Department of Education.

700.2(c) A public school, a Division-approved private school, a private agency, or a state or other public agency.

700.3 Insuring that special education staff providing services to resident children under the jurisdiction of the Bureau of Institutional Schools meet the requirements for certification as determined by applicable state and federal regulations.

700.4 Monitoring the overall efficiency and quality of the special education component of the programs for children in certain facilities under the control of the Department of Mental Health, Mental Retardation, Public Health, Youth Services and other human service agencies so designated by the Board of Education.

700.5 Insuring that each resident child receives all rights and protection granted through these regulations.

701.0 Provision of special education by school committees to children in certain facilities under the control of the Departments of Mental Health, Mental Retardation, Public Health, Youth Services and other Human Service agencies so designated by the Board of Education.

701.1 The school committee with jurisdiction over a child in certain facilities under the control of the Departments of Mental Health, Mental Retardation, Public Health, Youth Services and other human service agencies so designated by the Board of Education as determined by ¶202.1(c) of these regulations, shall provide or arrange for the provision of evaluations, reviews and reevaluations of such child in accordance with the provisions of Chapter 3 of these regulations.

701.2 The school committee with jurisdiction over a child in a day educational program at a facility under the control of the Departments of Mental Health, Mental Retardation, Public Health, Youth Services and other human service agencies so designated by the Board of Education as determined by ¶202.1 of these regulations, shall provide or arrange for the provision of special education to such child in accordance with ¶¶504.0, 505.0 and 502.10 including required services under ¶503.2 and required transportation under Chapter 8 of these regulations.

Chapter 8 - Transportation

800.0 Transportation the school committee must provide.

Each school committee shall provide or arrange for the provision of all transportation recommended by a TEAM pursuant to ¶802.0. In meeting such obligation, the school committee shall insure that there is full compliance with all conditions set by a TEAM for the transportation of a child in need of special education. The school committee shall transport or arrange for transportation of a child in need of special education on regular transportation vehicles (as defined in ¶127.0) unless one or more of the statements listed in ¶¶800.1, or 800.2, 800.3, and 800.4 apply to that child. If ¶¶800.1 or 800.4 apply to a child in need of special education, the school committee shall transport or arrange to have such child transported on vehicles which are not regular transportation vehicles. If ¶¶800.2 or 800.3 apply to a child in need of special education, the school committee shall transport or arrange to have such child transported either on regular transportation vehicles or on other vehicles.

800.1 The TEAM states such child cannot be transported on regular transportation vehicles.

800.2 Such child must be transported at times during which regular transportation vehicles are not normally operated.

800.3 Such child must be transported to points outside the jurisdiction of the school committee to which the school committee's regular transportation vehicles do not normally carry children.

800.4 The parents of such child provide the required transportation.

801.0 Transportation: Further conditions.

801.1 No school committee shall be relieved of the obligation to transport or arrange transportation for a child in need of special education on regular transportation vehicles by the fact that various conditions specified by a TEAM have to be fulfilled before such child may be transported on such vehicles.

801.2 The fact that one or more of the exceptions contained in ¶800.0 applies to part of the transportation required for a child in need of special education shall not excuse a school committee from providing or arranging for the provision, on regular transportation vehicles, of the other parts of the transportation required for that child.

801.3 In no event shall a school committee allow transportation considerations to influence, modify or determine the educational program provided to any child in need of special education.

801.4 A school committee may not write an IEP for a child consisting solely of transportation services without modification of the regular education program.

802.0 TEAM: Transportation plan.

As part of the IEP for each child in need of special education, each TEAM shall include the following:

802.1 The TEAM shall state whether the child requires transportation in order to participate fully in all parts of the program provided to the child.

802.2 The TEAM shall state whether the child is able to be transported on regular transportation vehicles. In making this decision, the TEAM shall state that a child can be transported on regular transportation vehicles, unless in its judgment, the child's condition is such that no modification of such vehicles or routes can feasibly be made which will allow the child to be safely transported on them.

802.3 If the child is one who may be transported on regular transportation vehicles, the TEAM shall state all conditions which must be fulfilled in order to transport the child safely, including:

802.3(a) Necessary modification in the vehicle used.

802.3(b) Special equipment which must be provided.

802.3(c) Any precautions which must be taken including a provision for an attendant.

802.4 If the child is one who cannot be transported on regular transportation vehicles, the TEAM shall state all conditions which must be met in order to safely transport the child, including the type of vehicle on which the child must be transported and the items listed in ¶802.3.

802.5 If, after the implementation of a child's IEP, such child requires transportation in addition to or different from that specified by the TEAM, the TEAM chairperson may with the parent's consent, modify the transportation recommended for the child. Such modifications or additions shall be treated as part of the child's IEP.

803.0 Transportation provided by the parents.

If the school committee arranges to have the parents of a child in need of special education transport such child, it shall pay such parents the prevailing rate per mile for state employees for each mile which such parents transport the child at the request of the school committee. Parents shall be reimbursed for the round trips traveled in a direct route between the child's home and school. No parent shall be required to provide transportation, nor shall any school committee be relieved of the obligation to provide transportation for such child because of the inability or unwillingness of such parents to provide such transportation.

804.0 Requirements with which school committees must comply.

When providing or arranging for the provision of transportation for children in need of special education by anyone other than the parent of the child being transported, the school committee shall comply with the following requirements:

804.1 It shall arrange to have children in need of special education who use wheelchairs transported in vehicles which do not require such children to be removed from their wheelchairs in order to enter or leave the vehicles; provided, however, that this requirement shall not be applicable where a TEAM or the child's physician recommends that the child regularly transfer in and out of conventional vehicles to or from a wheelchair for therapeutic or for independence training reasons.

804.2 It shall not permit any child in need of special education to be transported in a manner which requires a child to remain in the vehicle for more than one hour each way except with the approval of the TEAM as reflected on the transportation plan on the child's IEP.

804.3 It shall provide an in-service training program for operators of vehicles and attendants in carrying children in need of special education, to acquaint such operators and attendants with the needs of the children they are transporting and to equip them to meet those needs. Such operators and

attendants shall be required by the school committee to complete an in-service training program prior to operating vehicles.

804.4 It shall provide a qualified attendant on each vehicle which transports one or more children in need of special education, when such attendant is recommended by the TEAM in accordance with §§802.4 and 802.5.

804.5 It shall ascertain from the TEAM and each child's teachers and parents the nature of any need or problem which a child in need of special education has which may cause difficulties during transportation, such as seizures, a tendency to suffer motion sickness, behavioral concerns, and disabilities such as an inability to hear, see or communicate. The school committee shall communicate such information to any person who operates a vehicle or serves as an attendant in a vehicle in which such a child is transported, and insure that such person is trained to take necessary emergency measures.

804.6 It shall make sufficient inspections of equipment and unannounced spot checks throughout the year to insure compliance with all requirements of this chapter for transportation of children in need of special education.

804.7 It shall insure that someone is responsible for assisting a child in need of special education in and out of the home, on and off the vehicle and in and out of the classroom, when such assistance is necessary, as determined by the TEAM in accordance with §802.4.

804.8 It shall insure that all vehicles used in the transportation of children in need of special education comply with all applicable federal and state safety and equipment laws, including M.G.L. c.90, and that all drivers of such vehicles meet the standards of M.G.L. c.90.

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